

January 2, 2002 (8:45AM))

**OFFICE OF PROCUREMENT AND ASSISTANCE POLICY
CY 2001 INDEX OF POLICY FLASHES**

POLICY FLASH #	TITLE OF FLASH	DATED	ACTION OFFICER (orig.)
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2001-02	SATELLITE BROADCAST - Training Session on the Dear Rewrite of Regulations Governing Management and Operating Contracts	01/19/01	K. Smith
2001-03	Federal Small Business Developments	02/02/01	E. Lovett
2001-04	Notice of Proposed Rulemaking: Electronic Information Technology Accessibility	02/09/01	D. Wright
2001-05	Contractor Legal Management Requirements	02/09/01	J. Bashista
2001-06	Notice of Proposed Rulemaking: Conditional Payment of Fee, Profit, and Other Incentives	02/09/01	M. Righi
2001-07	Federal Acquisition Circulars (FACs) 97-22 and 97-23	02/26/01	D. Wright
2001-08	Rewrite of Regulations Governing Management and Operating Contracts	03/13/01	M. Righi
2001-09	Notice of Proposed Rulemaking (NOPR): Conditional Payment of Fee, Profit, and Other Incentives - Extension	03/13/01	M. Righi
2001-10	Federal Acquisition Circular (FAC) 97-22 - Delay of Effective Items I, III, IV, and V	03/22/01	D. Wright
2001-11	CANCELLATION OF DIRECTIVES	03/29/01	K. Smith
2001-12	FAR Class Deviation Addressing Contractor Responsibility	04/03/01	E. Lovett
2001-13	Federal Acquisition Circular (FAC)	04/26/01	E. Lovett
2001-14	Second Annual DOE Small Business Conference	05/02/01	E. Lovett M. Turturro
2001-15	Office of Federal Procurement Policy (OFPP) Determination of Executive Compensation Benchmark Amount	05/18/01	T. Sheppard
2001-16	Acquisition Letter (AL) 2001-03, Costs Associated with Whistleblower Actions	05/25/01	T. Sheppard

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**OFFICE OF PROCUREMENT AND ASSISTANCE POLICY
CY 2001 INDEX OF POLICY FLASHES**

POLICY FLASH #	TITLE OF FLASH	DATED	ACTION OFFICER (orig.)
2001-17	Federal Acquisition Circulars (FACs) 97-25 and 97-26	05/25/01	D. Wright
2001-18	Premier of Acquisition and Assistance e-Digest	05/31/01	K. Smith
2001-19	FINAL RULE - Administrative Amendment	07/10/01	T. Wood
2001-20	Consortium Buying Financial Assistance Letter (FAL) 2001-02 2001 Edition of the Federal Acquisition Regulation	08/02/01	E. Lovett T. Wood
2001-21	Acquisition Letter (AL) 2001-04 Acquisition Letter (AL) 2000-10R	08/22/01	D. Wright M. Raizen
2001-22	NEW Acquisition Guide Chapter	08/30/01	D. Wright
2001-23	Restrictions on Management and Operating and Support Services Contracting	10/02/01	M. Raizen
2001-24	1. Financial Assistance Letter (FAL) 2001-03 2. e-Digest	10/16/01	T. Wood M. Raizen
2001-25	1. Financial Assistance Letters (FAL) 2001-04 2. Acquisition Letter (AL) 2001-05	10/25/01	T. Wood R. Webb
2001-26	Federal Acquisition Circular 2001-01	11/06/01	M. Raizen T. Sheppard R. Webb
2001-27	Implementation of New Advance Award Notification	11/14/01	R. Webb P. Coombs
2001-28	Greening the Government Executive Orders	12/07/01	R. Langston
2001-29	Biological Etiologic Agents Notice 450.7 Implementation	12/11/01	M. Righi

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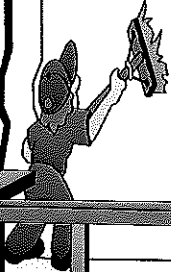


Headquarters Policy Flash

FLASH 2001-01

DATE: January 5, 2001
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management
SUBJECT: **Rewrite of Regulations Governing Management and Operating Contracts**

SUMMARY: The Final Rule, "Rewrite of Regulations Governing Management and Operating Contracts," was published in the Federal Register on December 22, 2000. This rule is effective January 22, 2001. The Federal Register website is http://www.access.gpo.gov/su_docs/aces/aces140.html. This flash provides a short summary of the Final Rule. We will be providing a satellite broadcast training session in the near future, with an opportunity for asking questions and receiving answers regarding the many changes to DEAR Part 970.




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- 138 The rulemaking amends portions of the DEAR that apply to M&O contracts to clarify that they mostly implement or supplement FAR coverage rather than replace it. DEAR coverage was reorganized and renumbered so that it corresponds with FAR. Coverage that was obsolete or unnecessary was removed – including ten DOE-unique contract clauses. Policies and procedures internal to DOE were removed and will be reissued in guidance documents as appropriate. The text of several clauses was amended to standardize commonly used deviations and modifications to prescribed FAR and DEAR clauses.
- 138 The rulemaking adds new contract clauses to prescribe uniform policies in the following areas:
 - DOE/contractor cooperation in the dissemination of information to the public;
 - technical direction provided to contractors by a designated Contracting Officer's Representative;
 - collaboration among DOE and its contractors in identifying, evaluating and instituting management improvements;
 - implementation of FAR policies pertaining to Federally Funded Research and Development Centers sponsored by the Department; and
 - community commitment to the local communities in which DOE conducts business.
- 138 The rulemaking amends the DEAR's coverage regarding management and operating contract cost principles by adopting the Federal Acquisition Regulation cost principles, with some supplemental material provided at Department of Energy Acquisition Regulation Part 970 in Subpart 970.31.
- 138 Contracting officers must apply these DEAR changes to solicitations issued on or after the effective date of this rule.
 - Contracting officers may, at their discretion, include these DEAR changes in solicitations issued before the effective date of this rule, provided award of the resulting contract(s) occurs on or after the effective date.
 - Contracting officers must apply these DEAR changes: to contracts extended in accordance with the Department's extend/compete policies and procedures (48 CFR 917.6, 48 CFR 970.1702-1(a), and internal guidance); and to options exercised under competitively awarded management and operating contracts (48 CFR 970.1702-1(b)).

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- Contracting officers may, after consulting with the Department of Energy Office of Procurement and Assistance Policy of the Office of Procurement and Assistance Management, apply these DEAR changes, with the exception of the changes to the cost principles and related clauses, to existing contracts.
- Contracting officers should modify existing contracts to incorporate the following clauses within one year of the effective date of this rule: 952.204-75, Public Affairs; 952.215-70, Key Personnel; 970.5203-2, Performance Improvement and Collaboration; 970.5203-3, Contractor's Organization; 970.5226-3, Community Commitment; and 970.5235-1, Federally funded Research and Development Center Sponsoring Agreement.

Questions concerning this flash should be directed to Michael L. Righi at michael.righi@pr.doe.gov (202) 586-8175.


Gwendolyn S. Cowan
Director

cc: PPAG Members



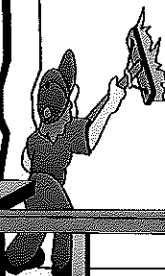
Headquarters Policy Flash

FLASH 2001-02

DATE: January 19, 2001
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

SUBJECT: **SATELLITE BROADCAST - Training Session on the DEAR
Rewrite of Regulations Governing Management and Operating
Contracts**

SUMMARY: In Policy Flash 2001-01, dated January 5, 2001, we announced and summarized the recently issued final rule titled, "Rewrite of Regulations Governing Management and Operating Contracts," which was published in the Federal Register on December 22, 2000.



As a followup to the final rule, we will conduct a training session for you and your staff via satellite broadcast on:

Thursday, February 1, 2001, from 2:00 p.m. to 4:00 p.m. E.S.T.



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The session will include presentations on: the history and background of the DEAR changes; applicability of the rulemaking; explanation of significant changes to the regulation; summary of new/amended contract clauses; explanation of the DEAR renumbering system; related policy/guidance issues; and summaries of other recently issued or pending FAR/DEAR rulemakings. An interactive question and answer session will follow the presentations as time allows.

In addition to your procurement staff, you may also wish to invite any other interested personnel who would benefit from this training, such as local DOE legal and financial staff, M&O contractor representatives, and internal auditors.

Technical arrangements for the broadcast will be made between Headquarters conferencing personnel and your local conferencing personnel who can give you the details of the specific room location at your site.

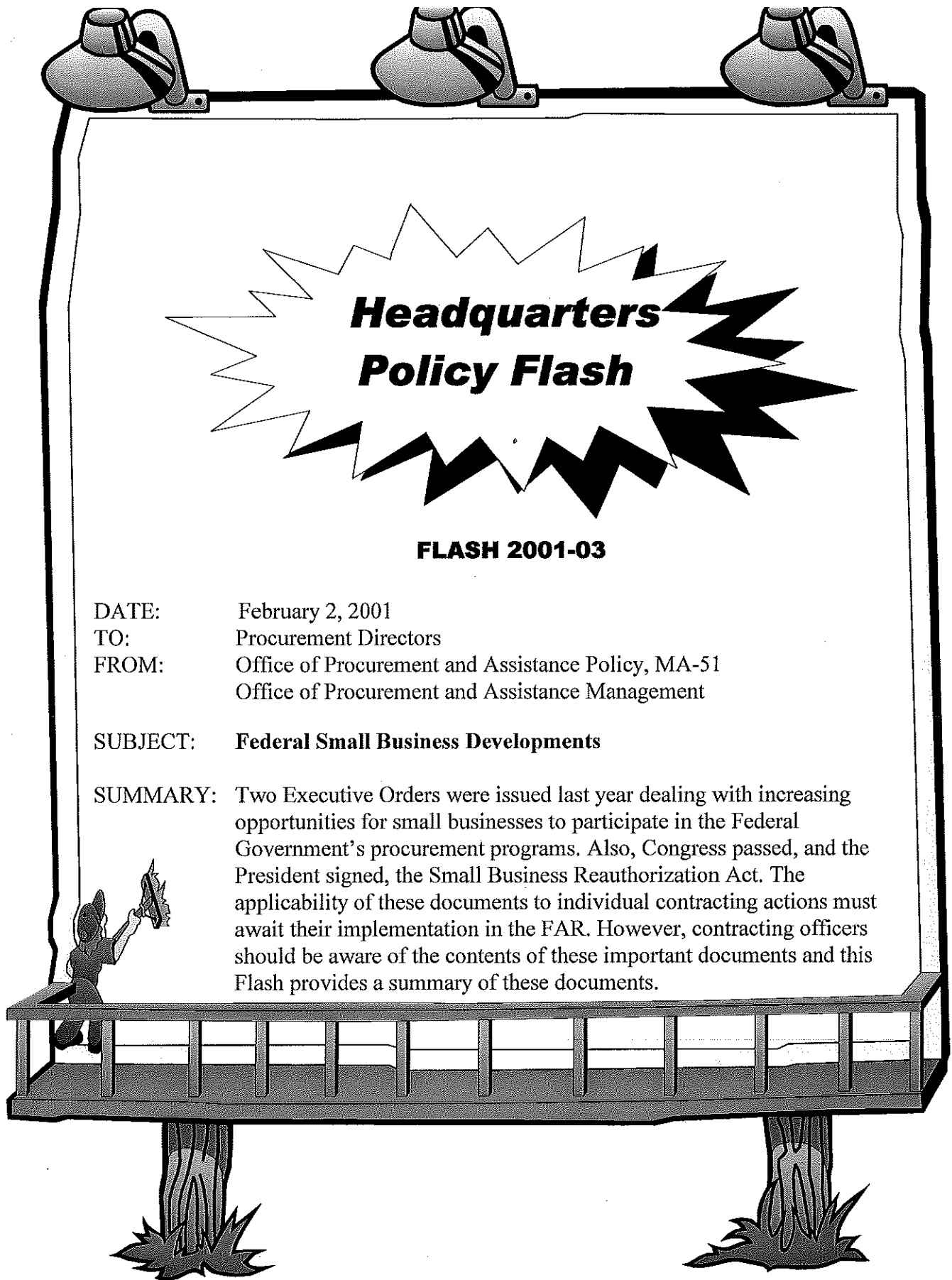
Handouts for this Training Session will be made available on the Procurement Homepage prior to the Broadcast for downloading and duplication within your office. We will notify you via e-mail when the handouts are posted on the Internet.

Additionally, we would appreciate receiving any questions you and your staff may have regarding the DEAR Rewrite prior to the Broadcast. Please submit your questions via e-mail to Michael Righi at michael.righi@pr.doe.gov by Tuesday, January 31, 2001.

To ensure your office is included in the broadcast, please confirm your participation with Kevin Smith by January 24, 2001 via e-mail at kevin.m.smith@pr.doe.gov or by telephone at (202) 586-8189.

Gwendolyn S. Cowan
Director

cc: PPAG Members



DATE: February 2, 2001
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

SUBJECT: **Federal Small Business Developments**

SUMMARY: Two Executive Orders were issued last year dealing with increasing opportunities for small businesses to participate in the Federal Government's procurement programs. Also, Congress passed, and the President signed, the Small Business Reauthorization Act. The applicability of these documents to individual contracting actions must await their implementation in the FAR. However, contracting officers should be aware of the contents of these important documents and this Flash provides a summary of these documents.

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Increasing Opportunities for Women-Owned Small Business - Executive Order 13157

- ☞ This Executive Order (65 FR 34035) reaffirms and strengthens the Federal Government's commitment to increased opportunities for women-owned small businesses (WOSB). It stresses the need to meet or exceed a government-wide 5% participation goal for WOSBs and requires that an agency that fails to meet its annual goals for WOSB must develop an action plan to increase the likelihood that its goal still be met or exceeded in following years.
- ☞ Agencies are required to designate a WOSB advocate and to prepare a long term comprehensive strategy to expand opportunities for WOSBs. The headquarters Office of Small and Disadvantaged Business Utilization (OSDBU) has the lead on both of these items.
- ☞ Agencies are tasked to work with the Small Business Administration and the Office of Federal Procurement Policy to increase compliance by prime contractors with subcontracting plans.
- ☞ Agencies must also:
 - include WOSB in competitive solicitations to the maximum extent possible;
 - ensure that acquisition planners structure acquisitions to facilitate competition by and among small businesses;
 - implement mentor protégé programs which include WOSBs; and
 - offer outreach, training, and technical assistance programs for WOSBs.

In support of this Executive Order, DOE has entered into a Memorandum of Understanding with 15 Woman Business Organizations to maximize the participation of WOSBs in DOE contracting, R&D programs, financial assistance programs, and innovative science and technology programs. The MOU is designed to:

- promote awareness of and use of WOSBs in DOE program offices, field offices, and its network of national laboratories and facilities;
- increase the participation of WOSBs in DOE outreach activities;

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- better prepare WOSBs to compete for R&D contracts and technology transfer programs
- promote the participation of WOSBs in small business contracting and other opportunities of the department; and
- increase the involvement of WOSBs in DOE's science and technology mission.

Increasing Opportunities and Access for Disadvantaged Businesses - Executive Order 13170

- ☞ This Executive Order (65 FR 60827) reaffirms and strengthens the Federal Government's commitment to increased opportunities and access for small disadvantaged business (SDB). It stresses the need to meet or exceed a Government-wide participation goal for small business concerns of not less than 23%; encourages a goal of 5% for SDBs; and requires a goal for awards to section 8(a) firms.
- ☞ Agencies are required to designate an individual to carry out the Executive Order and must prepare a long-term comprehensive plan to expand opportunities and access for SDBs. Agencies must also submit to the President an annual assessment of their efforts to increase the use of 8(a)s, SDBs and MBEs. The headquarters OSDDBU has the lead on three items.
- ☞ Agencies must also:
 - aggressively seek to ensure that 8(a)s, SDBs, and MBEs are aware of future contracting opportunities;
 - ensure that information regarding sole source contracts awarded through the 8(a) program receives the widest dissemination possible to 8(a)s;
 - use the SDB price evaluation preference (sic) programs to the maximum extent permitted by law. We believe that this section of the Executive Order is actually intended to reference the price evaluation adjustment program for SDBs rather than the price evaluation preference program for HUBZone firms (see FAR 19.000(a)(8));
 - aggressively use 8(a) firms, particularly in the development stages of a program;

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- seek to increase compliance by prime contractors with subcontracting plans;
 - encourage the establishment of business-to-business mentoring and teaming arrangements, including mentor-protégé programs;
 - offer information, training, and technical assistance to 8(a)s and SDBs; and
 - ensure that acquisition planners structure acquisitions to facilitate competition by 8(a)s and SDBs.
- ☞ Federal advertising contracts are to be structured as commercial acquisitions consistent with Part 12 of the FAR. Agencies are to take an aggressive role in ensuring substantial minority-owned entities' participation in such contracts. Agencies must also ensure substantial 8(a), SDB, and MBE participation in procurements for and related to information technology.
- ☞ Contracts that are proposed to be bundled must be submitted to SBA (see FAR 19.202-1(e)(1)(iii) for current procedures).

DOE has entered into a Memorandum of Understanding with the Minority Business Summit that supports this Executive Order. DOE will use the MOU to help maximize the participation of Minority Business Concerns (MBC) in DOE contracting, R&D programs, financial assistance programs, and science and technology programs. The MOU is designed to:

- promote awareness of and use of MBCs in DOE program offices, field offices, and its network of national laboratories and facilities;
- increase the participation of MBCs in DOE outreach activities;
- better prepare MBCs to compete for R&D contracts and technology transfer programs;
- promote the participation of MBCs in small business contracting and other opportunities of the department; and
- increase the involvement of MBCs in DOE's science and technology mission.

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Small Business Reauthorization Act of 2000 -- Public Law 106-554 dated 12/21/2000

Before the following legislative changes can become effective, SBA must issue regulations and those regulations must be implemented in the FAR. Specific guidance will be issued when the FAR adopts the SBA regulations.

- ☞ The legislative authority for the following programs is extended:
 - SBIR through September 30, 2008;
 - Drug-Free Workplace (renamed the "Paul D. Coverdell Drug-Free Workplace Program) through September 30, 2003;
 - Very Small Business Concerns through September 30, 2003; and
 - Socially and Economically Disadvantaged Business through September 30, 2003
- ☞ Section 803 of the Act revises the treatment of small business concerns owned and controlled by service-disabled veterans and small business concerns owned and controlled by veterans in subcontracting.
- ☞ The statute, when implemented, allows set-asides for WOSBs if
- ☞ the acquisition involves an industry which SBA has identified as one in which WOSBs are under-represented;
- ☞ the acquisition is under \$5,000,000 for manufacturing or under \$3,000,000 for all others; and
- ☞ the concern is certified as a WOSB or self certifies to the contracting officer and provides adequate documentation.

For further information on this Flash contact Ed Lovett at (202) 586-8257 for questions related to these two Executive Orders.


Gwendolyn S. Cowan, Director

cc: PPAG Members



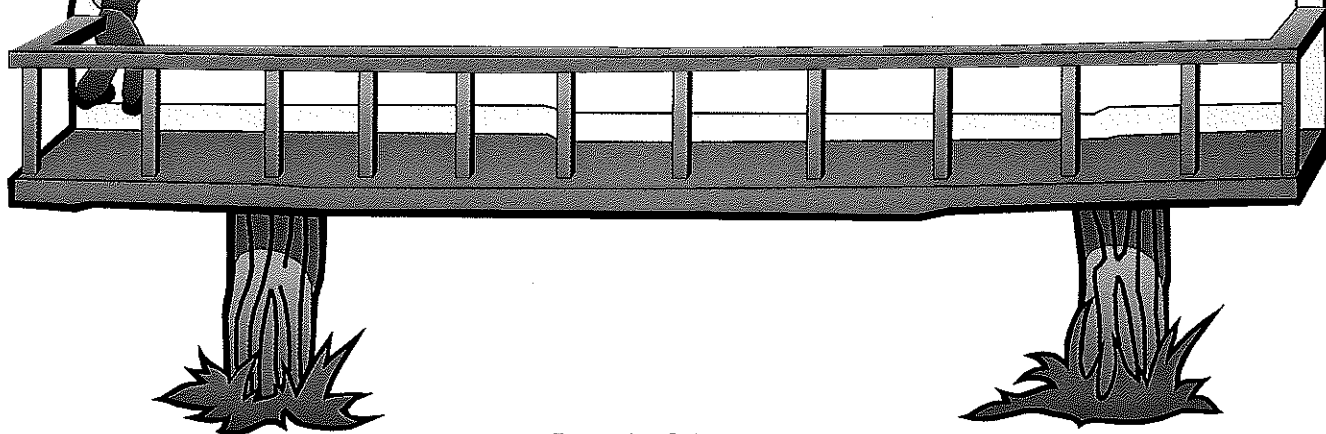
Headquarters Policy Flash

FLASH 2001-04

DATE: February 9, 2001
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

SUBJECT: **Notice of Proposed Rulemaking: Electronic and Information
Technology Accessibility**

SUMMARY: On January 22, 2001, a proposed rule was published in the Federal Register (66 FR 7166) to revise the FAR to incorporate the Electronic and Information Technology (EIT) Standards developed by the Architectural and Transportation Barriers Compliance Board (an independent Federal Agency popularly referred to as the "Access Board"). The EIT Accessibility Standards were developed pursuant to Section 508 of the Rehabilitation Act of 1973, as amended.



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- (A) Section 508 required the Access Board to publish standards setting forth a definition of EIT and the technical and functional performance criteria necessary for accessibility for such technology.
- (B) The rule proposes the following:
 - 1. Adds a definition for EIT; and
 - 2. Incorporates the Standards developed by the Access Board in FAR Parts 7, 10, 11, and 39 (new subpart to the FAR).
- (C) The Office of Procurement and Assistance Management is currently participating in an internal DOE working group led by the CIO's Office to guide the Department's implementation of Standards formed by the Access board. Also, we are taking part in a Federal EIT Accessibility Initiative sponsored by GSA. DOE implementing guidance will be issued following publication of the final rule amending the FAR.

The proposed rule can be downloaded from the Federal Register website at:
<http://www.arnet.gov/far/mailframe.html>, click on "Other Information - FAR proposed rules."

Written comments should be submitted to Denise P. Wright, Office of Procurement and Assistance Policy, no later than February 21, 2001. Comments may be faxed to (202) 586-0545 or via e-mail to denise.wright@pr.doe.gov. For additional information please contact Ms. Wright on (202) 586-6217.


John R. Bashista, Acting Director

cc: PPAG Members



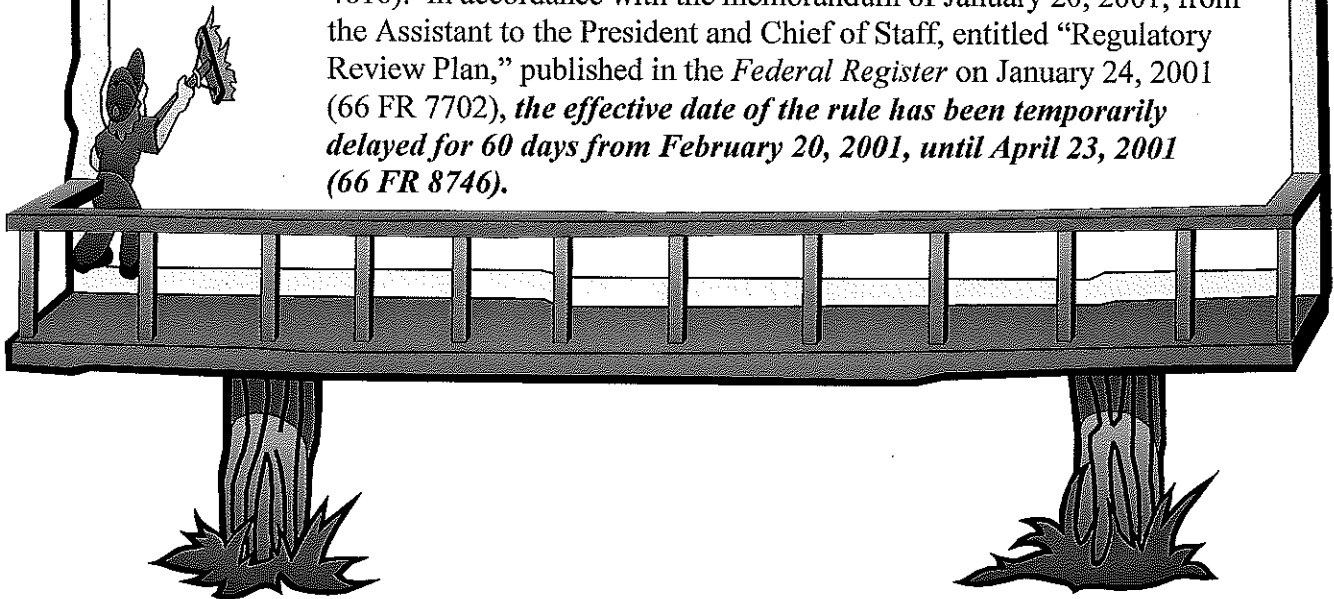
Headquarters Policy Flash

FLASH 2001-05

DATE: February 9, 2001
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

SUBJECT: **Contractor Legal Management Requirements**

SUMMARY: The final rule entitled "Contractor Legal Management Requirements," was published in the *Federal Register* on January 18, 2001 (66 FR 4616). In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled "Regulatory Review Plan," published in the *Federal Register* on January 24, 2001 (66 FR 7702), *the effective date of the rule has been temporarily delayed for 60 days from February 20, 2001, until April 23, 2001 (66 FR 8746).*



FLASH 2001-05
(February 9, 2001)

Notwithstanding the delay in the effective date of the rule, this Flash provides a brief summary of the final rule, including significant DOE and contractor responsibilities required thereunder.

The final rule establishes new regulations at 10 CFR part 719 which address contractor legal management requirements. Conforming amendments are also made to the Department of Energy Acquisition Regulation (DEAR). The rule establishes requirements pertaining to legal costs to be reimbursed by the Department to its contractors at Government owned or leased facilities under cost reimbursement contracts exceeding \$100,000,000. The new regulation also applies to law firms and legal counsel retained by the Department for litigation or other legal services where the legal costs are expected to exceed \$100,000 (see 10 CFR sections 719.3-719.4).

Department Counsel

10 CFR section 719.2 defines *Department counsel* as the individual in the field office, or Headquarter's office, designated as the contracting officer's representative (COR) and point of contact for a contractor or a Department retained law firm or attorney for submission and approval of the legal management plan, advance approval of certain costs, and submission of a staffing and resource plan. The COR designation need only cover the purposes of 10 CFR part 719, but it is imperative that someone from the local counsel's office be designated as COR for each contractor covered by this regulation to perform the required functions and activities in this regulation.

Actions by Department counsel may not exceed the responsibilities and limitations as delegated by the contracting officer and this is reiterated in section 719.40(b).

Contractor Submissions

Contractor submissions to Department counsel required by the regulation include: a legal management plan within 60 days of execution of a contract; a staffing and resource plan for legal matters expected to exceed \$100,000; an annual budget for pending matters; copies of engagement letters; and information copies of subcontractor vouchers for legal costs.

Advance Approvals

10 CFR section 719.35 lists costs (many of which are otherwise allowable costs under the FAR cost principles) which require advance approval from Department counsel, unless Department counsel indicates that approval of a request may only be given by the contracting officer. If a contracting officer determines that approval for costs listed in section 719.35 may not be delegated to the COR, that issue should be addressed in the COR designation letter.

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(February 9, 2001)

Amendments made to the DEAR include the following:


- ▶ Supplemental DOE coverage to the FAR cost principles at 48 CFR 31.205-19, Insurance and indemnification, and 48 CFR 31.205-33, Professional and consultant service costs, has been added.
- ▶ A new clause is prescribed for other than management and operating cost reimbursement contracts exceeding \$100,000,000 which involve work performed at a Department owned or leased site. The text of the clause is that contained in DEAR clause 970.5228-1, Insurance-Litigation and claims clause, as modified for non-M&O contracts now covered by the supplemental coverage set forth in 48 CFR 931.2. For DOE management and operating contracts, the clause at 970.5228-1 (also amended by the rule) continues to apply.

Contracting officers must apply these DEAR changes to:

- ▶ solicitations issued on or after the effective date of the rule (April 23, 2001);
- ▶ existing contracts that are extended in accordance with the Department's extend/compete policies and procedures (48 CFR 917.6, 48 CFR 970.1702-1(a), and internal guidance); and
- ▶ options exercised under competitively awarded management and operating contracts (48 CFR 970.1702-1(b)).

Contracting officers may, at their discretion, include these DEAR changes in solicitations issued before the effective date of the rule, provided award of the resulting contract(s) occurs on or after the effective date.

Procurement related questions concerning this regulation should be directed to Ms. Laura Fullerton at laura.fullerton@hq.doe.gov. Questions relating to the Department's legal management system should be directed to Ms. Anne Broker at anne.broker@hq.doe.gov.


John R. Bashista, Acting Director

cc: PPAG Members



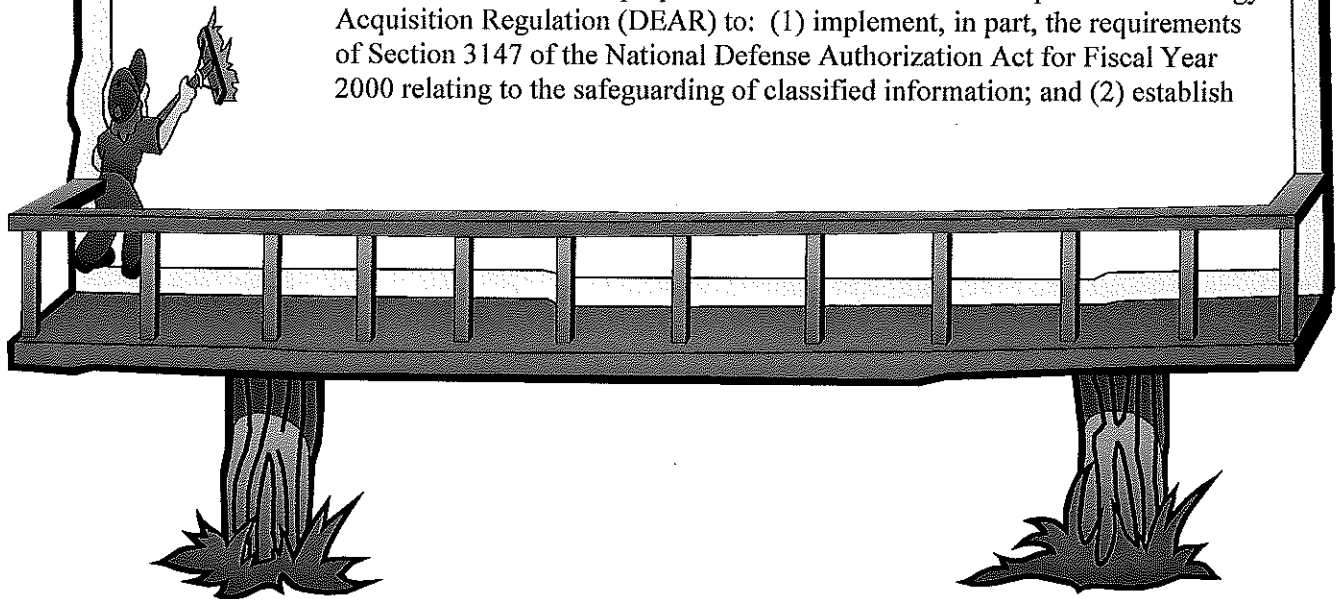
Headquarters Policy Flash

FLASH 2001-06

DATE: February 12, 2001
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

SUBJECT: **Notice of Proposed Rulemaking: Conditional Payment of Fee, Profit, and Other Incentives**

SUMMARY: On February 1, 2001, DOE published a proposed rule in the Federal Register (66 FR 8560) entitled "Conditional Payment of Fee, Profit, and Other Incentives." The proposed rule would amend the Department of Energy Acquisition Regulation (DEAR) to: (1) implement, in part, the requirements of Section 3147 of the National Defense Authorization Act for Fiscal Year 2000 relating to the safeguarding of classified information; and (2) establish



FLASH 2001-06
(February 12, 2001)

more objective standards and procedures for considering and applying reductions of fee or other amounts payable for contractor performance failures relating to environment, safety, and health (ES&H).

Some of the background for the proposed rule originates from Section 3147 of the National Defense Authorization Act for Fiscal Year 2000 (42 U.S.C. 2282b). The Act requires DOE to include a clause in its contracts that provides for reduction in the fees or amounts paid if the contractor or any of its employees violate any rule, regulation, or order relating to the safeguarding or security of Restricted Data or other classified or sensitive information. The statute also prescribes that the clause must specify various degrees of violations and the amount of the reduction attributable to each degree of violation.

Additionally, due to the potentially serious consequences that could result from performance failures relating to the Department's ES&H and safeguards and security programs, a major provision of a recent Departmental initiative was to establish more definitive objective standards and procedures for applying fee reductions for contractor failures relating to ES&H and the safeguarding of Restricted Data and classified information.

In light of the foregoing, the Department is proposing to amend the DEAR to implement the new statutory requirements and the Departmental initiative. The proposed amendments would apply to all DOE contracts and would be accomplished by use of one of two clauses.

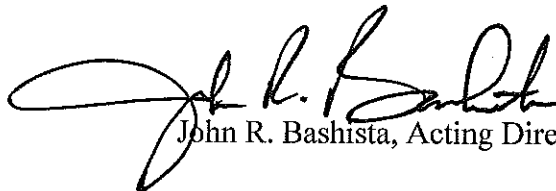
The first clause is a new clause entitled, "Conditional Payment of Fee or Profit -- Safeguarding Restricted Data and Other Classified Information." It would be prescribed for use in all DOE contracts that involve classified information, except DOE management and operating contracts and other contracts designated by the Procurement Executive, or designee. The clause would provide for reductions of earned fee or profit that is otherwise payable for contractor violations of laws, regulations, or directives relating to the safeguarding of Restricted Data and other classified information. As proposed, the clause sets forth the conditions that may precipitate a reduction of fee or profit, percentage reduction ranges that correlate to three degrees of violations relating to the safeguarding of Restricted Data or other classified information, and the methodology to be used in determining the amount of earned fee or profit that will be subject to reduction under the clause.

The second clause would be included in management and operating contracts and other contracts designated by the Procurement Executive, or designee. The current clause "Conditional payment of fee, profit, or incentives" would be amended and renamed "Conditional Payment of Fee,

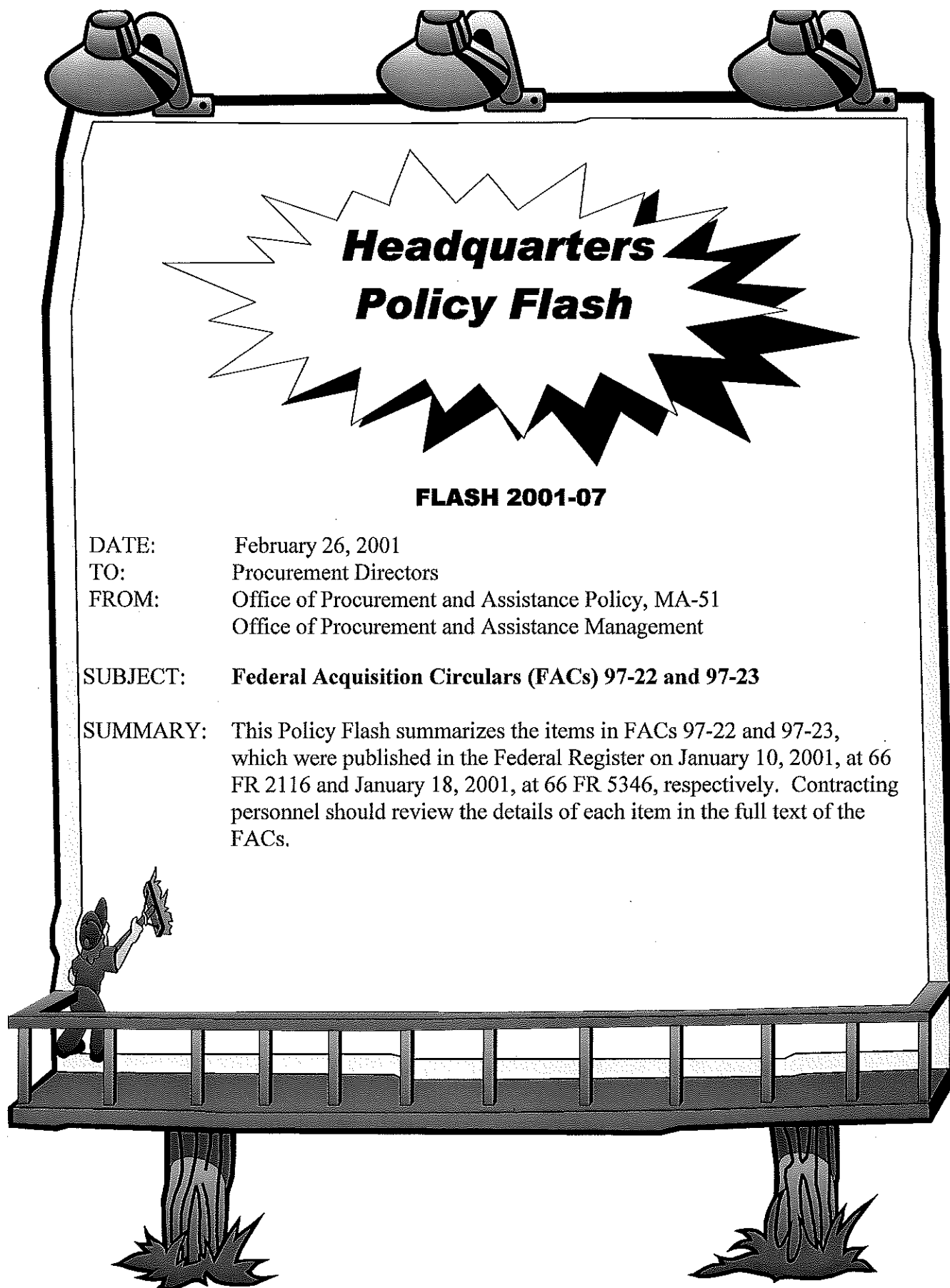
FLASH 2001-06
(February 12, 2001)

Profit, or Other Incentives – Facility Management Contracts.” The amended clause would provide for reductions of earned fee, fixed fee, profit, or share of cost savings that may otherwise be payable under the contract: for performance failures relating to ES&H; and, for contracts that involve or are likely to involve classified information, for contractor violations of laws, regulations, or DOE directives relating to the safeguarding of Restricted Data and other classified information. As proposed, the clause sets forth: the conditions that could precipitate a reduction of earned or fixed fee, profit, or share of cost savings under the contract; percentage fee, profit, or share of cost savings reduction ranges that correlate to three degrees of performance failures relating to ES&H and to the safeguarding of Restricted Data and other classified information; and the methodology to use to determine the amount of earned or fixed fee, profit, or share of cost savings that will be subject to reduction under the clause.

For additional information, contact Michael L. Righi at michael.l.righi@pr.doe.gov (202) 586-8175.


John R. Bashista, Acting Director

cc: PPAG Members



FLASH 2001-07
(FEBRUARY 26, 2001)

A. Federal Acquisition Circular (FAC) 97-22

The following five items are in **FAC 97-22**, which was published in the Federal Register on January 10, 2001, at 66 FR 2116. The FAC is available via the Internet at <http://www.arnet.gov/far>.

1. Definitions

Effective Date: March 12, 2001

Applicability: The FAR coverage, as amended by this rule, is applicable to solicitations issued on or after March 12, 2001.

This final rule clarifies the applicability of definitions used in the FAR; eliminates redundant or conflicting definitions, and makes definitions easier to find.

This final rule-

- Relocates definitions of terms that are used in more than one FAR part with the same meaning to 2.101;
- Relocates other definitions of terms to the "Definitions" section of the highest level FAR division (Part, subpart, or section) where the term as defined is used. For example, if a term was defined in a FAR section, but the term is used as defined in another section of the subpart, then the definition was moved to the "Definitions" section of that subpart;
- Clarifies that a term, defined in FAR 2.101, has the same meaning throughout the FAR unless the context in which the term is used clearly requires a different meaning; or unless another FAR part, subpart, or section provides a different definition for the particular part, subpart, or section;
- Adds cross-references to definitions of terms in FAR 2.101 that are defined differently in another part, subpart, or section of the Far; and
- Makes technical corrections throughout the FAR.

FLASH 2001-07
(FEBRUARY 26, 2001)

2. Applicability, Thresholds, and Waiver of Cost Accounting Standards Coverage

Effective Date: January 10, 2001

Applicability Date: The FAR coverage, as amended by this rule, is applicable to solicitations issued on or after January 10, 2001.

The interim rule published as Item VIII of FAC 97-18 (65 FR 36028, June 6, 2000) is converted to a final rule without change. This rule amends FAR Subpart 30.2, Cost Accounting Standards (CAS) Program Requirements, and the FAR clause at 52.230-1, Cost Accounting Standards Notices and Certification, to implement Section 802 of the National Defense Authorization Act for fiscal Year 2000 (Pub. L. 106-65) and the CAS Board's final rule, Applicability, Thresholds, and Waiver of Cost Accounting Standards Coverage.

The FAR rule revises policies affecting which contractors and subcontractors must comply with CAS by doing the following -

- Removing the requirement at FAR 52.230-1, Cost Accounting Standards Notices and Certification, that a contractor or subcontractor must have received at least one CAS-covered contract exceeding \$1 million ("trigger contract") to be subject to "full CAS coverage." The CAS Board added a new "trigger contract" dollar amount of \$7.5 million at paragraph (b) (7) of 48 CFR 9903.201-1, CAS applicability, which is already referenced at FAR 30.201-1;
- Revising FAR 30.201-4(b), disclosure and consistency of cost accounting practices, and FAR 52.230-1 to increase the dollar threshold for full CAS coverage from \$25 million to \$50 million; and
- Revising the CAS waiver procedures and conditions at FAR 30.201-5.

3. Advance Payments for Non-Commercial Items

Effective Date: March 12, 2001

Applicability Date: The FAR coverage, as amended by this rule, is applicable to solicitations issued on or after March 12, 2001.

FLASH 2001-07
(FEBRUARY 26, 2001)

This final rule amends the FAR to permit federally insured credit unions, in addition to banks, to participate in the maintenance of special accounts for advance payments. The rule will only affect contracting officers that provide contract financing using advance payments for non-commercial items.

4. Part 12 and Assignment of Claims

Effective Date: March 12, 2001

Applicability Date: The FAR coverage, as amended by this rule, is applicable to solicitations issued on or after March 12, 2001.

This final rule amends the FAR to correct an inconsistency between two clauses related to the assignment of claims. FAR 52.232-36, Payment by Third Party, prohibits a contractor from assigning its rights to receive payment under the contract if payment is made by a third party, such as when a Governmentwide commercial purchase card is used. This clause is cited in the contract clause at FAR 52.212-5 that addresses terms and conditions required to implement statutes or Executive orders for commercial items.

FAR 52.212-4, Contract Terms and Conditions-Commercial Items, addresses assignment of claims but does not include the third party prohibition. This rule revises FAR 52.212-4(b) to add the prohibition.

5. Clause Flowdown-Commercial Items

Effective Date: January 10, 2001

Applicability Date: The FAR coverage, as amended by this rule, is applicable to solicitations issued on or after January 10, 2001.

This final rule amends the clause at FAR 52.244-6, Subcontracts for Commercial Items, to revise the listing of clauses the contractor must flow down to subcontractors. The rule revises the listing to add the clause at FAR 52.219-8, Utilization of Small Business Concerns. In addition, the rule adds language to inform contractors that they may flow down a minimal number of additional clauses to subcontractors to satisfy their contractual obligations.

FLASH 2001-07
(FEBRUARY 26, 2001)

B. Federal Acquisition Circular (FAC) 97-23

The following item is in **FAC 97-23**, which was published in the Federal Register on January 18, 2001, at 66 FR 5346. The FAC is available via the Internet at <http://www.arnet.gov/far>.

Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor

Effective Date: February 20, 2001

Applicability Date: The FAR coverage, as amended by this rule, is applicable to solicitations issued on or after February 20, 2001.

This final rule amends the FAR to implement Executive Order 13126, Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor.

The FAR is amended by adding a new FAR subpart on prohibition of acquisition of products produced by forced or indentured child labor (Subpart 22.15), adding a new certification regarding knowledge of child labor for listed end products (FAR 52.212-3 and 52.222-18), and adding a clause at 52.222-19, which requires cooperation with authorities if the solicitation included the certification provision and provides remedies for violations relating to use of forced or indentured child labor.

Questions concerning this Flash should be directed to Denise Wright at (202) 586-6217 or via e-mail at denise.wright@pr.doe.gov.


John R. Bashista, Acting Director

cc: PPAG Members



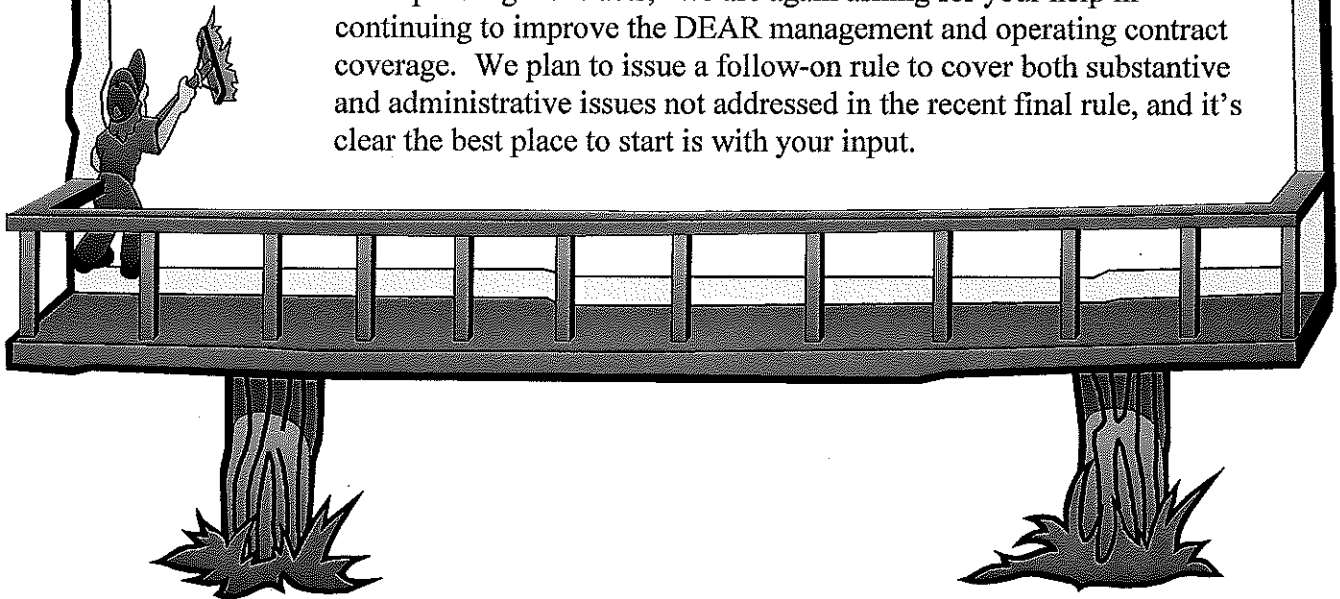
Headquarters Policy Flash

FLASH 2001-08

DATE: March 7, 2001
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

SUBJECT: Rewrite of Regulations Governing Management and Operating Contracts

SUMMARY: Having benefitted from your insightful and practical comments that led to the recent final rule, "Rewrite of Regulations Governing Management and Operating Contracts," we are again asking for your help in continuing to improve the DEAR management and operating contract coverage. We plan to issue a follow-on rule to cover both substantive and administrative issues not addressed in the recent final rule, and it's clear the best place to start is with your input.

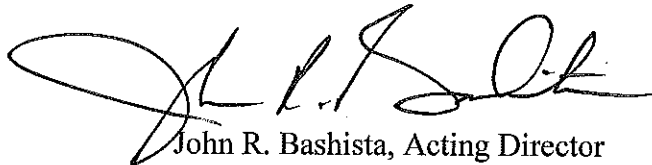


FLASH 2001-08
(March 07, 2001)

Some of the subject areas we will be looking at are:

- ◆ Technical Transfer Clauses;
- ◆ Facilities Management Clause;
- ◆ Local Clauses that merit DEAR coverage;
- ◆ Policy for Management and Integration Contracts;
- ◆ Contract Reform changes;
- ◆ Fee Policy;
- ◆ NNSA Unique Requirements;
- ◆ Work Authorization Program;
- ◆ Ownership of Records clause;
- ◆ Intercontractor Purchases; and
- ◆ Clause Prescriptions for the DEAR 952 clauses.

Please send us your ideas and concerns in any subject areas you want addressed. If you deem it appropriate, solicit ideas from your major contractors, combine them with yours, and submit a joint response. Line-in/line-out changes to DEAR language accompanied by rationale would be appreciated. Send your input to Mike Righi (e-mail: Michael.L.Righi@hq.doe.gov; phone: (202) 586-8175; fax: (202) 586-8175). If you could find time in your busy schedules to do so by March 30, 2001, it would be greatly appreciated.


John R. Bashista, Acting Director

cc: PPAG Members



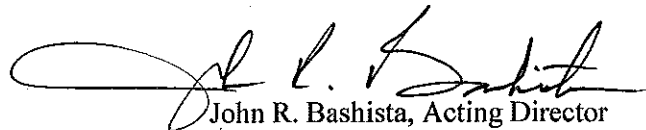
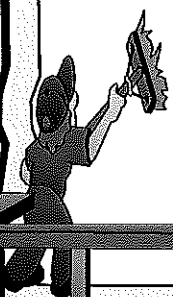
Headquarters Policy Flash

FLASH 2001-09

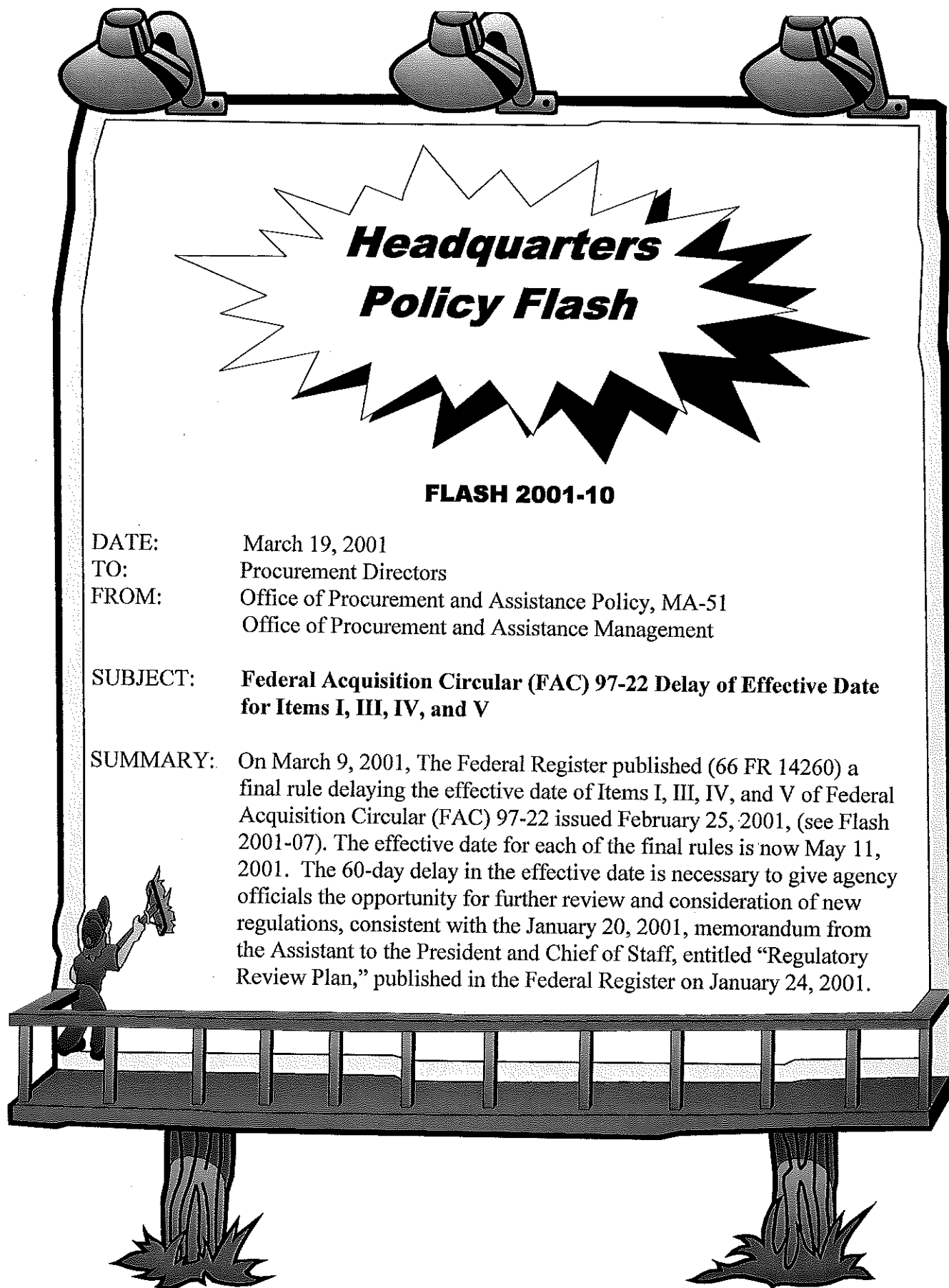
DATE: March 13, 2001
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

SUBJECT: **Notice of Proposed Rulemaking (NPR): Conditional Payment of Fee, Profit, and Other Incentives - Extension**

SUMMARY: The Department has extended the comment period for the NPR titled "Conditional Payment of Fee, Profit, and Other Incentives," published in the Federal Register on February 1, 2001 (66 FR 8560). The comment period was to end on March 5, 2001. In response to requests of several major contractors, the Department extended the comment period to on or before the close of business on April 5, 2001 (66 FR 13473, March 6, 2001). For questions related to this rule, contact Mike Righi at 202-586-8175.



John R. Bashista, Acting Director



Headquarters Policy Flash

FLASH 2001-10

DATE: March 19, 2001
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

SUBJECT: **Federal Acquisition Circular (FAC) 97-22 Delay of Effective Date for Items I, III, IV, and V**

SUMMARY: On March 9, 2001, The Federal Register published (66 FR 14260) a final rule delaying the effective date of Items I, III, IV, and V of Federal Acquisition Circular (FAC) 97-22 issued February 25, 2001, (see Flash 2001-07). The effective date for each of the final rules is now May 11, 2001. The 60-day delay in the effective date is necessary to give agency officials the opportunity for further review and consideration of new regulations, consistent with the January 20, 2001, memorandum from the Assistant to the President and Chief of Staff, entitled "Regulatory Review Plan," published in the Federal Register on January 24, 2001.



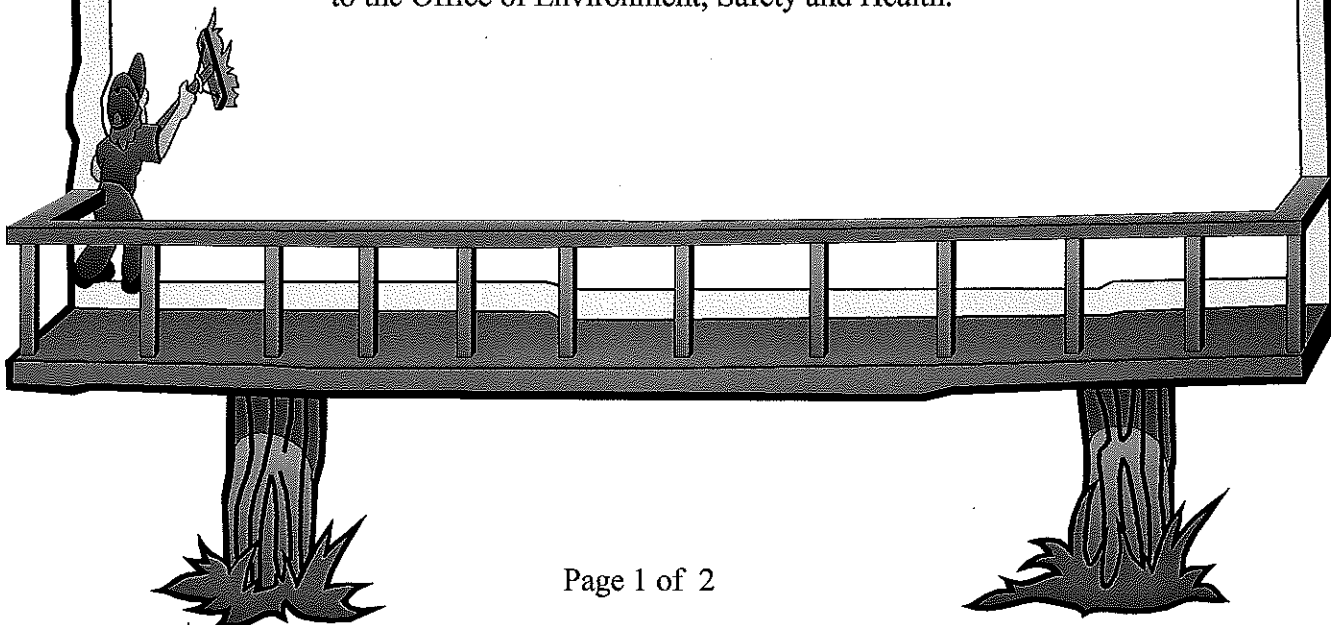
Headquarters Policy Flash

FLASH 2001-11

DATE: March 29, 2001
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

SUBJECT: **CANCELLATION OF DIRECTIVES**

SUMMARY: An administrative change to DOE N 251.38, CANCELLATION OF DIRECTIVES, dated 03-03-01 has been made that affects DOE O 4330.4B, MAINTENANCE MANAGEMENT PROGRAM. The Order is retained with the exception of Chapter I, which is cancelled in its entirety. Additionally the initiating office for DOE O 4330.4B is transferred from the Office of Procurement and Assistance Management to the Office of Environment, Safety and Health.



FLASH 2001-11
(MARCH 29, 2001)

When issued, DOE O 433.X, MAINTENANCE MANAGEMENT PROGRAM, currently undergoing final Field Management Council review and approval, will cancel and replace DOE O 4330.4B.

These updates may be viewed and downloaded on the Internet at:

http://www.explorer.doe.gov:1776/cgi-bin/w3vdkhgw?qryMFCbmxFPF_;doe-2192

http://www.explorer.doe.gov:1776/cgi-bin/w3vdkhgw?qryPFCVftKQ_;doe-192

Questions concerning this Flash should be directed to Kevin Smith at (202) 586-8189 or via-e-mail at KEVIN.M.SMITH@hq.doe.gov



John R. Bashista, Acting Director



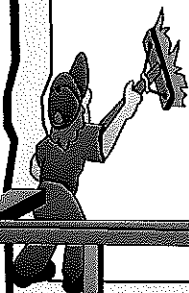
Headquarters Policy Flash

FLASH 2001-12

DATE: April 3, 2001
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

SUBJECT: FAR Class Deviation Addressing Contractor Responsibility

SUMMARY: Acquisition Letter (AL) 2001-02, subject as above, is suspended. AL 2001-02 was issued on February 15, 2001. It transmitted a class deviation to the FAR as modified by FAC 97-21. The class deviation affected FAR: 9.103(b), 9.104-1(d), 9.104-3 new paragraph (c), 14.404-2(i), 15.503(a), 31.205- 47(a) and (b), 52.209-5 and 52.212-3(b). The class deviation directed that Contracting Officers were to follow the FAR as it existed on January 18, 2001.



FLASH 2001-12

(April 3, 2001)

The suspension of the AL is due to the Federal Register publication (66 FR 17754) of an interim FAR rule and the stay of the final FAR rule in FAC 97-21. The FAR interim rule mirrors AL 2001-02. It is effective for solicitations issued on or after January 19, 2001. Contracting Officers must amend solicitations already issued that incorporate the certification provisions from the final rule published in the Federal Register on December 20, 2000 (65 FR 80255). The net effect is that Contracting Officers should continue to adhere to the FAR as it was on January 18, 2001.

For questions related to this Flash, contact Ed Lovett at (202) 586-8257, or via e-mail at Ed.Lovett@hq.doe.gov

John R. Bashista, Acting Director

cc: PPAG Members



Headquarters Policy Flash

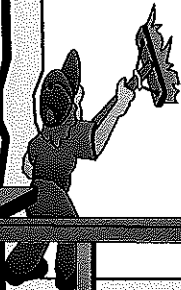
FLASH 2001-13

DATE: April 26, 2001
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

SUBJECT: Federal Acquisition Circulars (FAC)

SUMMARY: FAC 97-27, which implements section 508 of the Rehabilitation Act of 1973, as amended, was published in the Federal Register on April 25, 2001. *The effective date of FAC 97-27 is June 25, 2001. A copy of the FAC is attached.*

Flash 2001-04, issued on February 9, 2001, summarized the contents of the proposed FAR rule implementing section 508, which was published on January 22, 2001. The following summarizes notable issues addressed in FAC 97-27 that resulted from public comments received to the proposed rule:



FLASH 2001-13

(April 26, 2001)

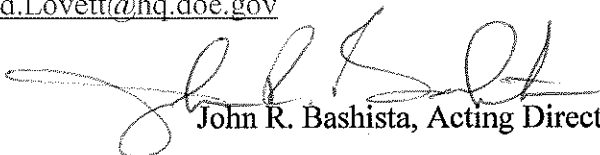
- *Applicability:* As noted above, the effective date of the rule is June 25, 2001. For other than indefinite-quantity contracts, the rule will apply to contracts awarded on or after the effective date. For indefinite-quantity contracts, including Federal Supply Schedules contracts (FSSs), Government-wide Acquisition Contracts (GWACs), and Multi-Agency Contracts (MACs), the rule will apply to delivery orders or task orders issued on or after the effective date of the rule.
- *Provisions/Clauses:* Although no provisions or clauses were included in the proposed rule, nor were any added to the final rule, the FAR Council is further considering whether standard provisions or clauses should be prescribed in the FAR to ensure consistent Government-wide implementation.
- *Information on Compliant Products:* The General Services Administration has established a web-site at <http://www.section508.gov>, which provides information on section 508, including specific information on section 508 compliant products. A reference to this website has been added to the regulation at new section 39.201.

An Acquisition Letter is currently being developed which will provide Departmental guidance regarding the requirements of section 508 and implementing FAR coverage.

Please note that FAC 97-27 was issued in advance of FACs 97-25 and 97-26, both of which will include FAR implementation for 2 of 3 Executive Orders dealing with certain labor issues that were signed by President Bush on February 17, 2001. Approval for the issuance of FACs 97-25 and 97-26 is pending, however, it is anticipated that both will be published in the near future. The rules contained in these FACs will be issued as interim final rules and will be effective on the date of publication — which is expected to precede the effective date of the rule contained in FAC 97-27. Therefore, it is recommended that FAC 97-27 not be posted until FACs 97-25 and 97-26 have been issued/posted.

We will provide notification of the issuance of FACs 97-25 and 97-26 upon their publication in the Federal Register.

For questions related to this Flash contact Ed Lovett by phone at (202) 586-8257, or via e-mail at Ed.Lovett@hq.doe.gov


John R. Bashista, Acting Director

Attachment



Federal Register

Wednesday,
April 25, 2001

Part IV

Department of Defense General Services Administration

National Aeronautics and Space Administration

48 CFR Part 2, et al.

48 CFR Chapter 1

Federal Acquisition Regulations;
Electronic and Information Technology
Accessibility and Small Entity Compliance
Guide; Federal Acquisition Circular 97-27,
FAR Case 1999-607; Final Rules

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 2, 7, 10, 11, 12, and 39****[FAC 97-27; FAR Case 1999-607]****RIN 9000-AI69****Federal Acquisition Regulations;
Electronic and Information Technology
Accessibility**

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulations (FAR) to implement Section 508 of the Rehabilitation Act of 1973. Subsection 508(a)(3) requires the FAR to be revised to incorporate standards developed by the Architectural and Transportation Barriers Compliance Board (also referred to as the "Access Board").

DATES: *Effective Date:* June 25, 2001.

Applicability Date: For other than indefinite-quantity contracts, this amendment applies to contracts awarded on or after the effective date. For indefinite-quantity contracts, it is applicable to delivery orders or task orders issued on or after the effective date.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAC 97-27, FAR case 1999-607.

SUPPLEMENTARY INFORMATION:**A. Background**

The Workforce Investment Act of 1998, Public Law 105-220, was enacted on August 7, 1998. Title IV of the Act is the Rehabilitation Act Amendments of 1998. Subsection 408(b) amended section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d). Subsection 508(a)(1) requires that when Federal departments or agencies develop, procure, maintain, or use Electronic and Information Technology (EIT), they

must ensure that the EIT allows Federal employees with disabilities to have access to and use of information and data that is comparable to the access to and use of information and data by other Federal employees. Section 508 also requires that individuals with disabilities, who are members of the public seeking information or services from a Federal department or agency, have access to and use of information and data that is comparable to that provided to the public without disabilities. Comparable access is not required if it would impose an undue burden.

Subsection 508(a)(2)(A) required the Access Board to publish standards setting forth a definition of EIT and the technical and functional performance criteria necessary for accessibility for such technology by February 7, 2000. Subsection 508(a)(3) required the Federal Acquisition Regulatory Council to revise the FAR to incorporate the Access Board's standards not later than 6 months after the Access Board regulations were published. The Access Board published the final standards in the *Federal Register* at 65 FR 80500, December 21, 2000.

A proposed rule to amend the FAR was published in the *Federal Register* at 66 FR 7166, January 22, 2001. The 60-day comment period ended March 23, 2001.

This final rule implements the Access Board's regulations by—

- Including the definition of the term "electronic and information technology," a term created by the statute;
- Incorporating the EIT Standards in acquisition planning, market research, and when describing agency needs; and
- Adding a new Subpart 39.2.

Applicability

The proposed rule did not address the issue of whether the new rule would apply to contracts already in existence. A number of public commentators asked for clarification about the applicability of the rule.

For other than indefinite-quantity contracts, this amendment applies to contracts awarded on or after the effective date. For indefinite-quantity contracts, it is applicable to delivery orders or task orders issued on or after the effective date. Indefinite-quantity contracts may include Federal Supply Schedule contracts, governmentwide acquisition contracts (GWACs), multi-agency contracts (MACs), and other interagency acquisitions. Exception determinations are not required for award of the underlying indefinite-quantity contracts, except for

requirements that are to be satisfied by initial award. Indefinite-quantity contracts may include noncompliant items, provided that any task or delivery order issued for noncompliant EIT meets an applicable exception. Accordingly, requiring activities must ensure compliance with the EIT accessibility standards at 36 CFR part 1194 (or that an exception applies) at time of issuance of task or delivery orders.

Contracting offices that award indefinite-quantity contracts must indicate to ordering offices which supplies and services the contractor indicates as compliant, and show where full details of compliance can be found (e.g., vendor's or other exact web page location).

The Access Board's EIT standards at 36 CFR part 1194 do not apply to—

- Taking delivery for items ordered prior to the effective date of this rule;
- Within-scope modifications of contracts awarded before the effective date of this rule;
- Exercising unilateral options for contracts awarded before the effective date of this rule; or
- Multiyear contracts awarded before the effective date of this rule.

Exceptions

Unless an exception at FAR 39.204 applies, acquisitions of EIT supplies and services must meet the applicable accessibility standards at 36 CFR part 1194. The exceptions in 39.204 include—

- Micro-purchases, prior to January 1, 2003. However, for micro-purchases, contracting officers and other individuals designated in accordance with 1.603-3 are strongly encouraged to comply with the applicable accessibility standards to the maximum extent practicable;
- EIT for a national security system;
- EIT acquired by a contractor incidental to a contract;
- EIT located in spaces frequented only by service personnel for maintenance, repair or occasional monitoring of equipment; and
- EIT that would impose an undue burden on the agency.

Micro-purchases

The exception for micro-purchases was in the proposed rule. It was made in recognition of the fact that almost all micro-purchases are made using the Governmentwide commercial purchase card. Government personnel, who are not warranted contracting officers, use the purchase card to purchase commercial-off-the-shelf items. Use of the purchase card makes it generally

impractical to comply with the EIT accessibility standards unless commercial-off-the-shelf products are labeled for standards compliance. Manufacturers are continuing to develop products that comply with the EIT accessibility standards. It is expected that almost all products will comply with the standards within the next two years, and be labeled by the manufacturer accordingly. Therefore, we have established a sunset date of January 1, 2003, for the micro-purchase exemption. Prior to that date, the Government will revisit the state of technology and the pace at which manufacturers have conformed to the required standards.

The micro-purchase exception does not exempt all products that cost under \$2,500. Some commentors were confused about this. The exception is for a one-time purchase that totals \$2,500 or less, made on the open market rather than under an existing contract. A software package that costs \$1,800 is not a micro-purchase if it is part of a \$3,000 purchase, or part of a \$3,000,000 purchase. Regardless of purchase price, there still is an agency requirement to give reasonable accommodation for the disabled under section 504 of the Rehabilitation Act of 1973. The current micro-purchase limit is \$2,500, set by statute. If the threshold is increased by a statutory change, the FAR Council will consider keeping the FAR Subpart 39.2 limit at \$2,500.

In addition, GSA will recommend that agencies modify cardholder training to remind purchase cardholders of EIT accessibility requirements.

Undue Burden

Another set of comments wanted the FAR to elaborate on undue burden. The Access Board discussed undue burden in its final rule preamble (at 65 FR 80506 of the *Federal Register*). Substantial case law exists on this term, which comes from disability law. The Access Board chose not to disturb the existing understanding of the term by trying to define it. The FAR Council agrees with this approach. Agencies are required by statute to document the basis for an undue burden. Requiring officials should be aware that when there is an undue burden, the statute requires an alternative means of access to be provided to individuals with disabilities.

Clauses

Some commentors asked for a clause, pointing out that unless the FAR prescribes a clause, agencies may produce different clauses, resulting in inconsistent coverage across the

Government. Some procurement offices want a clause to help address their lack of experience with the Access Board standards. No clauses were in the January proposed rule. The FAR Council is carefully considering whether clauses are needed and welcomes comments on this issue that would inform a potential rulemaking.

Other Issues

A topic of concern to commentors was the play between the definition of EIT and a contractor's incidental use of EIT. The rule was not intended to automatically apply to a contractor's internal workplaces. For example, EIT neither used nor accessed by Federal employees or members of the public is not subject to the Access Board's standards (contractor employees in their professional capacity are not members of the public for purposes of section 508).

Commentors asked for further information on section 508 product compliance. There is a website at <http://www.section508.gov>, providing information from manufacturers and vendors on how they meet Access Board standards. The website reference has been added to the FAR language at Subpart 39.2.

Commentors asked whether the Committee for Purchase from People Who Are Blind or Severely Disabled, and Federal Prison Industries (UNICOR) were covered. These are required sources for certain items. Agencies must consider noncompliant EIT items from these sources the same way that they would consider items from commercial sources, *i.e.*, whether purchasing the item would come under an exception. As a matter of policy, purchases from the Committee for Purchase from People Who Are Blind or Severely Disabled and Federal Prison Industries are to be treated as procurements.

The current status of compliance testing also was discussed in comments. Currently there is no uniform testing. However, there is an industry-led, Government-sponsored, program in the works, Accessibility for People with Disabilities through Standards Interoperability and Testing (ADIT). See the Section 508 website for information.

Questions arose on draft rule section 39.X03, Applicability, on the interpretation of standards available in the marketplace. The rule intended to recognize that initially there will be many products that do not meet all the Access Board's technical standards. Agencies may need to acquire these products. When acquiring commercial items, an agency must comply with those accessibility standards that can be

met with supplies and services available in the commercial marketplace in time to meet the agency's delivery requirements. Individual standards that cannot be met would be documented by the requiring official, with a copy to the contract file. If products are available that meet some, but not all applicable standards, agencies cannot claim a product as a whole is nonavailable just because it does not meet all of the standards.

Requirements Development, Market Research, and Solicitations

The requiring official must identify which standards apply to the procurement, using the Access Board's EIT Accessibility Standards at 36 CFR part 1194. Then the requiring official must perform market research to determine the availability of compliant products and services; vendor websites and the Section 508 website would be helpful here. The requiring official must then identify which standards, if any, would not apply in this procurement because of, for example, nonavailability (FAR 39.203) or undue burden (FAR 39.204(e)). Technical specifications and minimum requirements would be developed based on the market research results and agency needs. This information would be submitted with the purchase request. The solicitation would then be drafted, or a task order or delivery order would be placed. Proposal evaluation may yield additional information that could require reconsideration of the need for an exception.

B. Executive Order 12866

The Access Board determined that their December 21, 2000, final rule was an economically significant regulatory action under E.O. 12866, and was a major rule under 5 U.S.C. 804. An economic assessment was accomplished and was placed on the Access Board's website at <http://www.accessboard.gov/sec508/assessment.htm>. A copy can be obtained from the Access Board. The FAR Council has determined that the assessment conducted by the Access Board provides an adequate economic assessment of both the Access Board rule and this change to the FAR. Accordingly, the Access Board's regulatory assessment meets the requirement of performing a regulatory assessment for this change to the FAR and no further assessment is necessary.

This is an economically significant regulatory action and was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is a major rule under 5 U.S.C. 804.

C.RegulatoryFlexibilityAct

This rule has a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because small businesses that choose to market their products to the Federal Government must ensure that their electronic and information technology supplies or services meet the substantive requirements of the Access Board's standards. Since this may result in increased costs of producing and selling their products, a Final Regulatory Flexibility Analysis (FRFA) has been performed and the analysis is summarized as follows:

The objective of this rule is to revise the FAR to improve the accessibility of electronic and information technology used by the Federal Government. The standards developed by the Access Board affect Federal employees with disabilities as well as members of the public with disabilities who seek to use Federal electronic and information technologies to access information. This increased access reduces barriers to employment in the Federal Government for individuals with disabilities and reduces the probability that Federal employees with disabilities will be underemployed. The EIT standards developed for the Federal Government may result in benefiting people outside the Federal workforce, both with and without disabilities. The accessible technology from the Federal Government may spill over to the rest of society.

Section 508 uses the Federal procurement process to ensure that technology acquired by the Federal Government is accessible. Failure of an agency to purchase electronic and information technology that complies with the standards promulgated at 36 CFR part 1194, may result in an individual with a disability filing a complaint alleging that a Federal agency has not complied with the standards. Individuals may also file a civil action against an agency. The enforcement provision of section 508 takes effect June 21, 2001.

This rule establishes that contractors must manufacture, sell, or lease electronic and information technology supplies or services that comply with standards promulgated at 36 CFR part 1194. For many contractors, this may simply involve a review of the supply or service with the standards to confirm compliance. For other contractors, these standards could require redesign of a supply or service before it can be sold to the Federal Government. According to the Federal Procurement Data System in fiscal year 2000, we estimate that there are approximately 17,550 contractors to which the rule will apply. Approximately, 58 percent, or 10,150, of these contractors are small businesses.

Small businesses will have to analyze whether the electronic and information technology they or their customers plan to sell to the Federal Government complies with the standards. Manufacturers may want to redesign to make their supplies and services compliant, to have a better chance for their items to be purchased by the Government.

Retailers will need to coordinate with the manufacturers. The statute will decrease demand for some supplies and services that are not compliant, leading to decreased sales for small entities manufacturing or selling those items. Conversely, the statute will increase demand for some supplies and services that are compliant, leading to increased sales for small entities manufacturing or selling those items.

Since the statute imposes private enforcement, where individuals with disabilities can file civil rights lawsuits, the Government has little flexibility for alternatives in writing this regulation. To meet the requirements of the law, we cannot exempt small businesses from any part of the rule.

The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the FRFA may be obtained from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR parts in accordance with 5 U.S.C. 610. Comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 1999-607), in correspondence.

D.PaperworkReductionAct

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

ListofSubjects in 48 CFR Parts 2, 7, 10, 11, 12, and 39

Government procurement.

Dated: April 20, 2001.

Al Matera,
Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 97-27 is issued under the authority of the Secretary of Defense, the Administrator of Aeronautics and Space Administration.

All Federal Acquisition Regulation (FAR) changes and other directive material contained in FAC 97-27 are effective June 25, 2001.

Dated: April 19, 2001.

Deidre A. Lee,
Director, Defense Procurement.

Dated: April 16, 2001.

David A. Drabkin,
Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: April 16, 2001.

Tom Luedtke,
Associate Administrator for Procurement, National Aeronautics and Space Administration.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 7, 10, 11, 12, and 39 as set forth below:

1. The authority citation for 48 CFR parts 2, 7, 10, 11, 12, and 39 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. In section 2.101, add in alphabetical order, the definition "Electronic and information technology (EIT)" to read as follows:

2.101 Definitions.

* * * * *

Electronic and information technology (EIT) has the same meaning as "information technology" except EIT also includes any equipment or interconnected system or subsystem of equipment that is used in the creation, conversion, or duplication of data or information. The term EIT, includes, but is not limited to, telecommunication products (such as telephones), information kiosks and transaction machines, worldwide websites, multimedia, and office equipment (such as copiers and fax machines).

* * * * *

PART 7—ACQUISITION PLANNING

3. In section 7.103, redesignate paragraphs (o) through (r) as (p) through (s), respectively; and add a new paragraph (o) to read as follows:

7.103 Agency-head responsibilities.

* * * * *

(o) Ensuring that acquisition planners specify needs and develop plans, drawings, work statements, specifications, or other product descriptions that address Electronic and Information Technology Accessibility Standards (see 36 CFR part 1194) in proposed acquisitions (see 11.002(e)) and that these standards are included in requirements planning, as appropriate (see subpart 39.2).

* * * * *

PART 10—MARKET RESEARCH

4. In section 10.001, add paragraph (a)(3)(vii) to read as follows:

10.001 Policy.

(a) * * *

(3) * * *

(vii) Assess the availability of electronic and information technology

that meets all or part of the applicable accessibility standards issued by the Architectural and Transportation Barriers Compliance Board at 36 CFR part 1194 (see Subpart 39.2).

* * * * *

PART 11—DESCRIBING AGENCY NEEDS

5. In section 11.002, add paragraph (f) to read as follows:

11.002 Policy.

* * * * *

(f) In accordance with Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d), requiring activities must prepare requirements documents for electronic and information technology that comply with the applicable accessibility standards issued by the Architectural and Transportation Barriers Compliance Board at 36 CFR part 1194 (see subpart 39.2).

PART 12—ACQUISITION OF COMMERCIAL ITEMS

6. Amend section 12.202 by adding a new paragraph (d) to read as follows:

12.202 Market research and description of agency need.

* * * * *

(d) Requirements documents for electronic and information technology must comply with the applicable accessibility standards issued by the Architectural and Transportation Barriers Compliance Board at 36 CFR part 1194 (see subpart 39.2).

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

7. Revise section 39.000 to read as follows:

39.000 Scope of part.

This part prescribes acquisition policies and procedures for use in acquiring—

(a) Information technology, including financial management systems, consistent with other parts of this regulation, OMB Circular No. A-127, Financial Management Systems, and OMB Circular No. A-130, Management of Federal Information Resources; and

(b) Electronic and information technology.

8. Add Subpart 39.2, consisting of sections 39.201 through 39.204, to read as follows:

Subpart 39.2—Electronic and Information Technology

Sec.

39.201 Scope of subpart.

39.202 Definition.
39.203 Applicability.
39.204 Exceptions.

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

39.201 Scope of subpart.

(a) This subpart implements section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d), and the Architectural and Transportation Barriers Compliance Board Electronic and Information Technology (EIT) Accessibility Standards (36 CFR part 1194).

(b) Further information on section 508 is available via the Internet at <http://www.section508.gov>.

(c) When acquiring EIT, agencies must ensure that—

(1) Federal employees with disabilities have access to and use of information and data that is comparable to the access and use by Federal employees who are not individuals with disabilities; and

(2) Members of the public with disabilities seeking information or services from an agency have access to and use of information and data that is comparable to the access to and use of information and data by members of the public who are not individuals with disabilities.

39.202 Definition.

Undue burden, as used in this subpart, means a significant difficulty or expense.

39.203 Applicability.

(a) Unless an exception at 39.204 applies, acquisitions of EIT supplies and services must meet the applicable accessibility standards at 36 CFR part 1194.

(b)(1) Exception determinations are required prior to contract award, except for indefinite-quantity contracts (see paragraph (b)(2) of this section).

(2) Exception determinations are not required prior to award of indefinite-quantity contracts, except for requirements that are to be satisfied by initial award. Contracting offices that award indefinite-quantity contracts must indicate to requiring and ordering activities which supplies and services the contractor indicates as compliant, and show where full details of compliance can be found (e.g., vendor's or other exact website location).

(3) Requiring and ordering activities must ensure supplies or services meet the applicable accessibility standards at 36 CFR part 1194, unless an exception applies, at the time of issuance of task or delivery orders. Accordingly, indefinite-quantity contracts may include noncompliant items; however,

any task or delivery order issued for noncompliant items must meet an applicable exception.

(c)(1) When acquiring commercial items, an agency must comply with those accessibility standards that can be met with supplies or services that are available in the commercial marketplace in time to meet the agency's delivery requirements.

(2) The requiring official must document in writing the nonavailability, including a description of market research performed and which standards cannot be met, and provide documentation to the contracting officer for inclusion in the contract file.

39.204 Exceptions.

The requirements in 39.203 do not apply to EIT that—

(a) Is purchased in accordance with Subpart 13.2 (micro-purchases) prior to January 1, 2003. However, for micro-purchases, contracting officers and other individuals designated in accordance with 1.603-3 are strongly encouraged to comply with the applicable accessibility standards to the maximum extent practicable;

(b) Is for a national security system;

(c) Is acquired by a contractor incidental to a contract;

(d) Is located in spaces frequented only by service personnel for maintenance, repair or occasional monitoring of equipment; or

(e) Would impose an undue burden on the agency.

(1) *Basis*. In determining whether compliance with all or part of the applicable accessibility standards in 36 CFR part 1194 would be an undue burden, an agency must consider—

(i) The difficulty or expense of compliance; and

(ii) Agency resources available to its program or component for which the supply or service is being acquired.

(2) *Documentation*. (i) The requiring official must document in writing the basis for an undue burden decision and provide the documentation to the contracting officer for inclusion in the contract file.

(ii) When acquiring commercial items, an undue burden determination is not required to address individual standards that cannot be met with supplies or service available in the commercial marketplace in time to meet the agency delivery requirements (see 39.203(c)(2) regarding documentation of nonavailability).

[FR Doc. 01-10408 Filed 4-24-01; 8:45 am]

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Headquarters Policy Flash


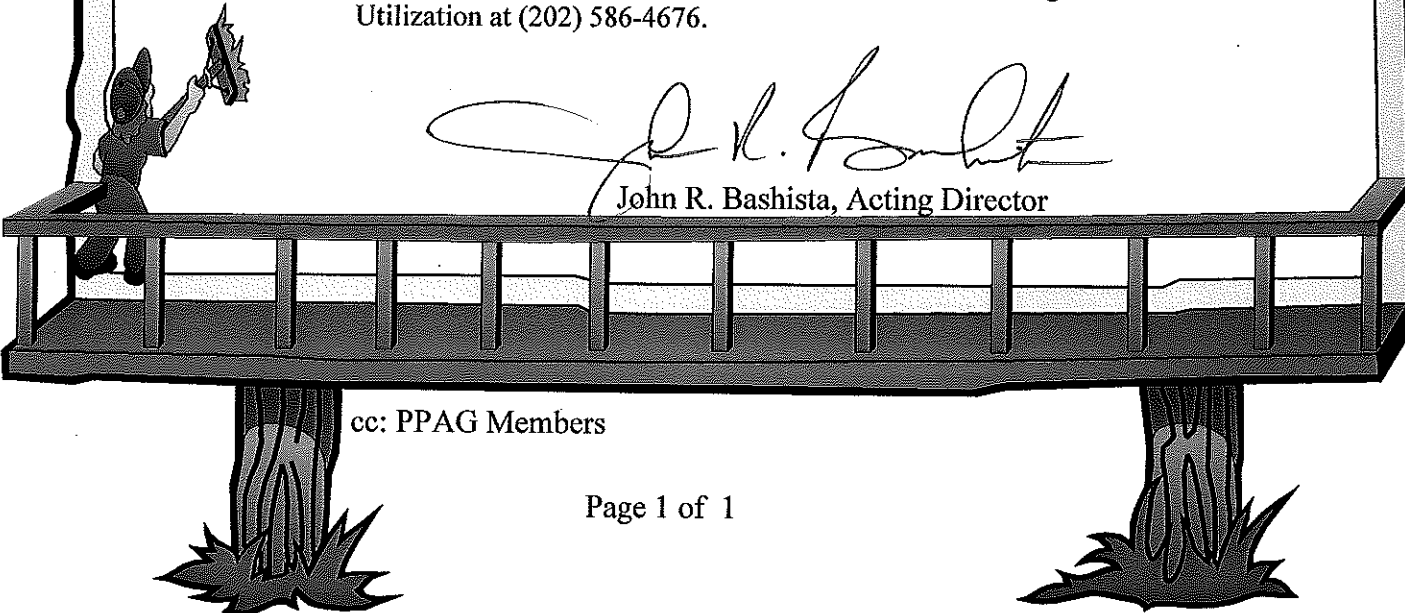
FLASH 2001-14

DATE: May 2, 2001
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

SUBJECT: Second Annual DOE Small Business Conference

SUMMARY: This year's Small Business Conference will be held in Las Vegas, Nevada, June 20-22, 2001. The conference brings together program and procurement officials, our major contractors, and small businesses. Please ensure that your major contractors are aware of the conference. *Reservations must be made by **FRIDAY, MAY 11, 2001.***

The conference website address is:
<http://www.bechtelnevada.com/SBAconf/Index.htm>. For more information, call Myrna Turturro in the Office of Small and Disadvantaged Business Utilization at (202) 586-4676.



John R. Bashista, Acting Director

cc: PPAG Members



Headquarters Policy Flash

FLASH 2001-15

DATE: May 18, 2001
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

SUBJECT: Office of Federal Procurement Policy (OFPP) Determination of
Executive Compensation Benchmark Amount

SUMMARY: The Administrator of OFPP has determined that the "benchmark compensation amount" that is allowable under government contracts is \$374,228 for costs incurred during contractors' fiscal year (FY) 2001. This determination was made pursuant to Section 39 of the OFPP Act (41 U.S.C. 435) and was published in the *Federal Register* Vol. 66, No. 86, May 3, 2001, attached.

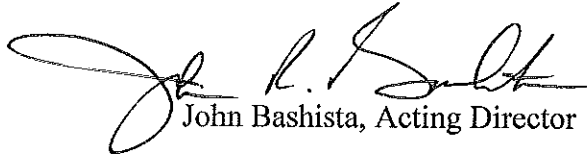
This "benchmark compensation amount" is to be used for contractor FY 2001 and subsequent contractor FYs unless and until revised by OFPP. Note that in prior years the "benchmark compensation amount" applied to costs incurred after January 1. This year it applies to costs incurred during the entire contractor FY 2001, whenever that starts.

FLASH 2001-15
(MAY 18, 2001)

This "benchmark compensation amount" supercedes the amount cited in Headquarters Policy Flash 2000-14, dated May 9,2000.

Applicability to FAR and M&O contracts is addressed at 48 CFR 31.205-6(p) and 48 CFR 970-31-2-05-06(p), respectively.

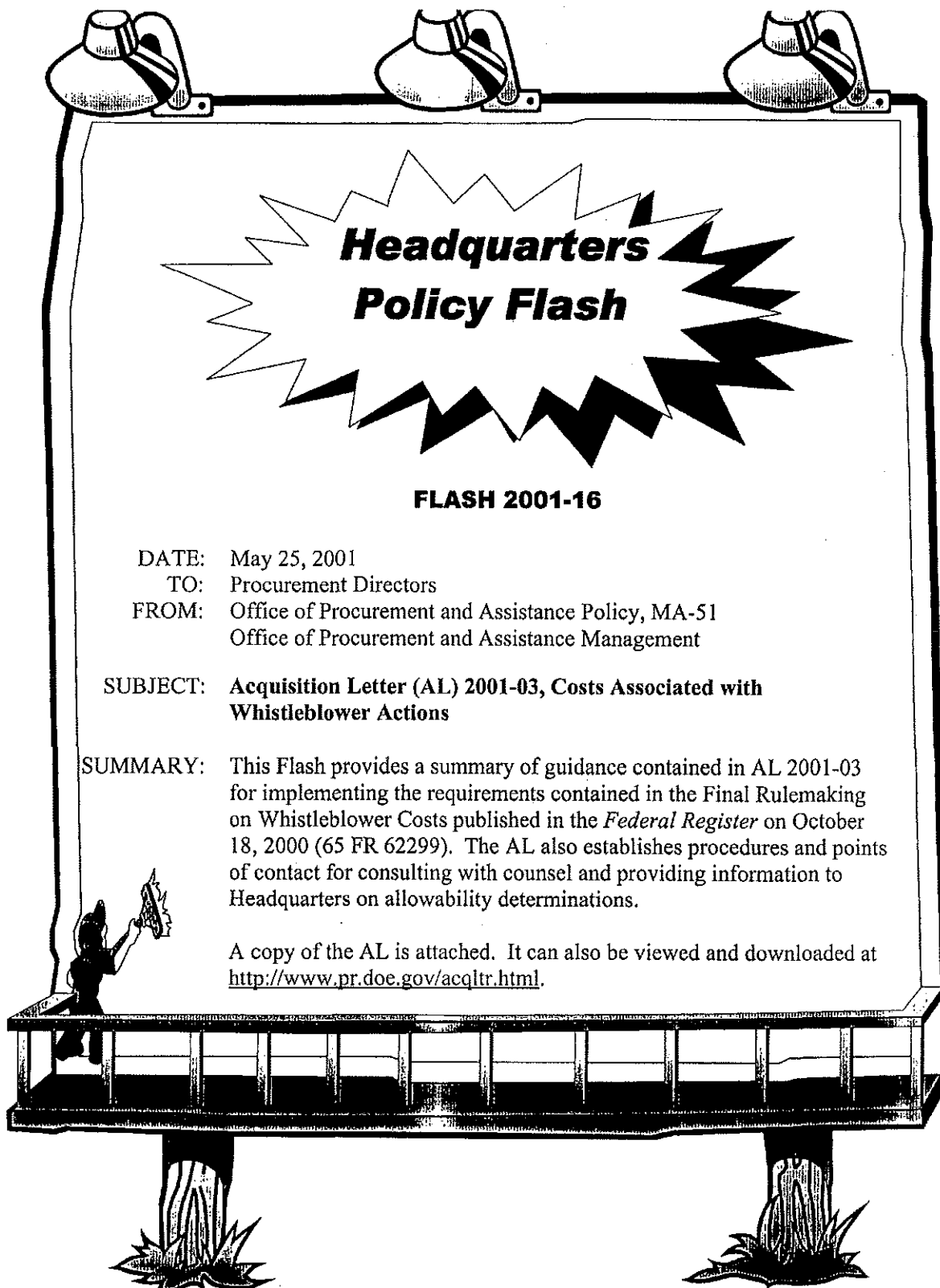
Questions regarding the foregoing may be addressed to Terry Sheppard of this office at (202) 586-8193, or via e-mail at terry.sheppard@hq.doe.gov.



John Bashista, Acting Director

Attachment

cc: PPAG Members



Headquarters Policy Flash

FLASH 2001-16

DATE: May 25, 2001
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

SUBJECT: **Acquisition Letter (AL) 2001-03, Costs Associated with Whistleblower Actions**

SUMMARY: This Flash provides a summary of guidance contained in AL 2001-03 for implementing the requirements contained in the Final Rulemaking on Whistleblower Costs published in the *Federal Register* on October 18, 2000 (65 FR 62299). The AL also establishes procedures and points of contact for consulting with counsel and providing information to Headquarters on allowability determinations.

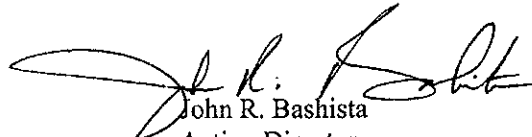
A copy of the AL is attached. It can also be viewed and downloaded at <http://www.pr.doe.gov/acqltr.html>.

FLASH 2001-16
(MAY 25, 2001)

The Department has established a whistleblower costs' point-of-contact in the Office of General Counsel, the Office of the Assistant General Counsel for Procurement and Financial Assistance (GC-61). Contracting officers, or their designated representatives, must consult with counsel before making an allowability determination on costs associated with whistleblower actions as specified in the regulation. Consultation with local counsel will satisfy this requirement.

Contracting officers are required to report their final allowability determinations, and the analysis or basis for their determinations, to the Office of Procurement and Assistance Management. The information will promote an evenhanded approach, avoid unwarranted variation across the Department's complex of facilities, be a resource for providing lessons learned, and guidance to contracting officers. The final report, in the form of an electronic copy of the contracting officer's written final determination, must be e-mailed to:
whistleblowers@hq.doe.gov.

Questions concerning the AL may be directed to Terry Sheppard at (202) 586-8193, or by e-mail at: terry.sheppard@hq.doe.gov



John R. Bashista
Acting Director

cc:
PPAG Members

Attachment:
AL2001-03



Department of Energy
Acquisition Regulation

No. 2001-03
Date May 25, 2001

ACQUISITION LETTER

This Acquisition Letter is issued under the authority of the Procurement Executives of DOE and NNSA.

Subject: COSTS ASSOCIATED WITH WHISTLEBLOWER ACTIONS

References:

DEAR 931.205-47(h)
DEAR 952.216-7, Alt II
DEAR 970.3102-05-47(h)
DEAR 970.5232-2, Payments and Advances

When Does this Acquisition Letter Expire?

This Acquisition Letter will expire when this guidance is distributed as an Acquisition Guide section or otherwise superseded.

Whom Do You Contact for More Information?

Contact Terry Sheppard of the Office of Procurement and Assistance Policy at (202) 586-8193 or terry.sheppard@hq.doe.gov

Visit our website at www.pr.doe.gov for information on Acquisition Letters and other policy issues.

What is the Purpose of this Acquisition Letter?

The purpose of this AL is: (1) to provide contracting officers guidance to implement the requirements contained in the Final Rulemaking on Whistleblower Costs published in the Federal Register October 18, 2000, 65 FR 62299; and (2) establish procedures and points of contact for consulting with counsel and providing information to Headquarters on allowability determinations.

What is Required in the New Regulation?

The new regulation requires contracting officers to determine allowability of defense, settlement and award costs on a case-by-case basis after considering the terms of the contract, relevant cost regulations, and relevant facts and circumstances, including federal law and policy prohibiting

AL-2001-03 (05/25/01)

reprisal against whistleblowers, available at the conclusion of the employee whistleblower claim. The cost principle addresses only the costs associated with whistleblower retaliation claims filed in Federal and state courts and with Federal agencies under 29 CFR Part 24, 48 CFR (FAR) subpart 3.9, 10 CFR Part 708 or 42 U.S.C. 7239.

The regulation also requires the Department to establish a whistleblower costs point-of-contact in the Office of General Counsel (the GC point-of-contact). Contracting officers, or their designated representatives, must consult with counsel before making an allowability determination on costs associated with whistleblower actions as specified in the regulation. The purpose of this requirement is to promote an evenhanded approach and to avoid unwarranted variation across the Department's complex of facilities.

Contracting officers are required to report their final allowability determinations, and the analysis or basis for their determinations, to the Office of Procurement and Assistance Management. The information will also be a resource for providing lessons learned and future guidance to contracting officers.

How will this new regulation be implemented in contracts?

The amended coverages at DEAR 931.205-47(h) and DEAR 970.3102-20 were published in the *Federal Register* (Vol 65, No. 202), October 18, 2000 with an effective date of November 17, 2000 and must be included in all solicitations issued on or after that date for both M&O and non-M&O contracts. A subsequent rulemaking, 65 FR (December 22, 2000), moved the material at DEAR 970.3102-20 to DEAR 970.3102-05-47(h). The contracting officer may apply the changes to existing solicitations for M&O and non-M&O contracts provided award of the resulting contract(s) occurs on or after the effective date.

Contracting officers must apply these DEAR changes to: contracts extended in accordance with the Department's extend/compete policies and procedures (DEAR 917.6, DEAR 970.1702-1(a)), and internal guidance; and options exercised under competitively awarded M&O contracts (DEAR 970.1702-1(b)).

Contracting officers may, after consulting with the Office of Procurement and Assistance Policy, apply these DEAR changes to existing contracts.

In order to implement the new cost principle for non-M&O cost reimbursement contracts, contracting officers must include DEAR 952.216-7, Alternate II. This will ensure that when the allowability of costs is determined in accordance with part 31 of the Federal Acquisition Regulation (FAR), allowability shall also be determined in accordance with part 931 of the Department of Energy FAR Supplement.

Who is the Office of General Counsel Point-of-Contact?

The Office of the Assistant General Counsel for Procurement and Financial Assistance (GC-61) will serve as the GC point-of-contact. The regulation currently makes consultation with the GC point-of-contact mandatory. Contracting officer consultation with local counsel will also satisfy this requirement. Local counsel, when consulted instead of the GC point-of-contact, will determine whether further consultation with Headquarters is required. The GC point-of-contact will assist contracting officers, their designated representatives, and local counsel by providing summaries of relevant cases of Board of Contract Appeals decisions and other guidance material. The GC point-of-contact will consult with the General Counsel for NNSA when a NNSA site is involved, and with other Headquarters and program offices, including the Office of Environment, Safety and Health, and the Offices of Procurement and Assistance Management, when coordination is appropriate, based on the information provided about the case.

What is the Procedure for "Consulting" with the GC Point-of-Contact?

The contracting officer, or a designated representative, must consult with Headquarters GC or local counsel. Consultation with Headquarters GC should be requested electronically to: whistleblowers@hq.doe.gov

The following information may be useful in any request for consultation:

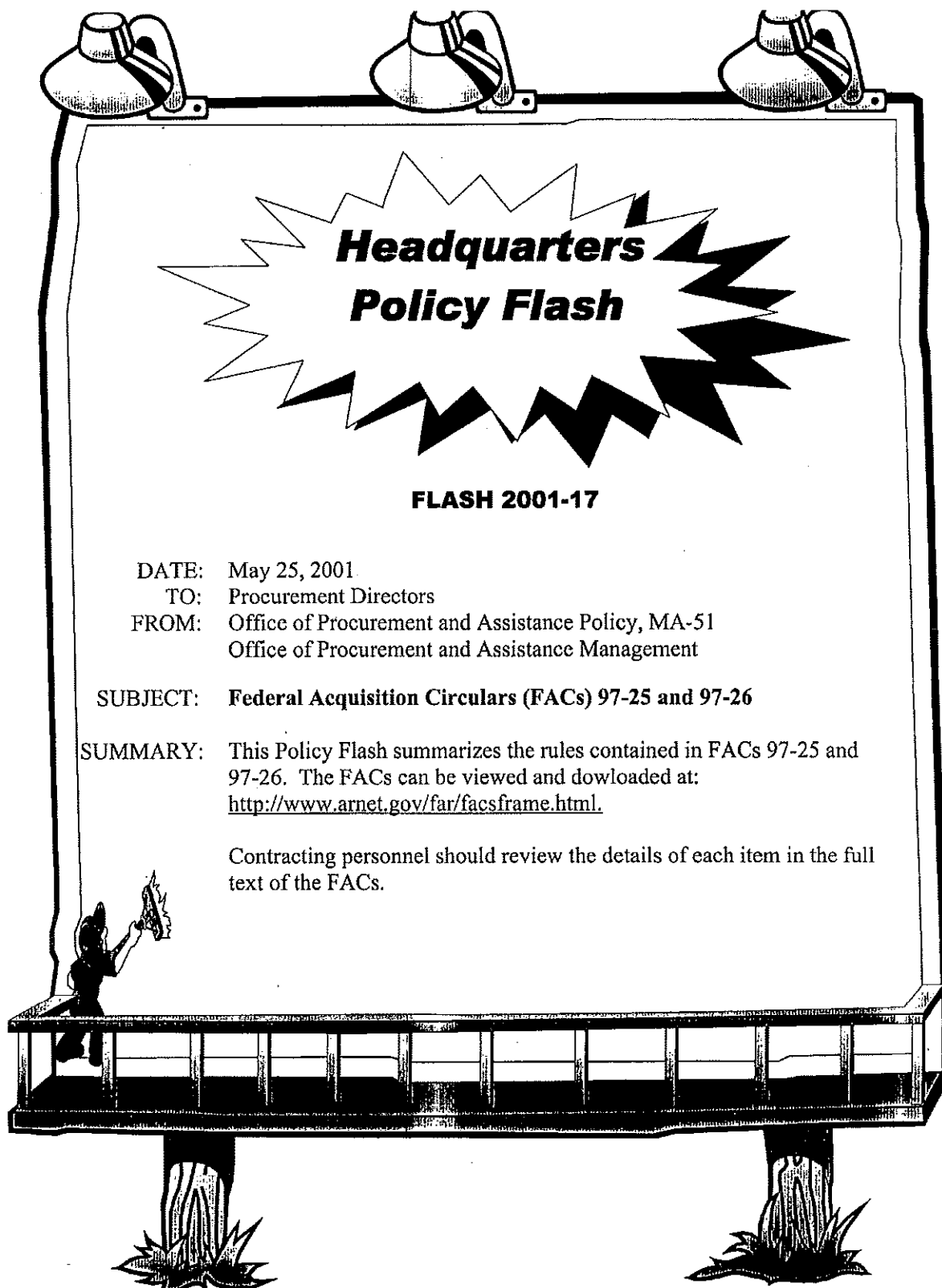
- Type of action:
(Federal or state court, or administrative action under 29 CFR Part 24, 48 CFR subpart 3.9, 10 CFR Part 708 or 42 U.S.C. 7239)
- Breakdown of costs submitted for reimbursement, including settlement costs and any of the following categories if applicable:
 - (A) Employee back-pay award:
 - (B) Damages, if any, awarded to employee, and whether they are compensatory or punitive:
 - (C) Employee legal fees reimbursed:
 - (D) Contractor legal fees reimbursed:
- Any particular provisions in the contract addressing the pertinent cost and if there are any reasons why the costs should be treated or funded any differently than as a normal cost:
- Key facts or circumstances which may be pivotal in determination of allowability or unallowability:
(For example: the finding was reached by a judge or jury; any statements of culpability contained in a settlement agreement; the existence of similar complaints against the employer or a particular individual; or remedial action instituted by the contractor)
- Name, e-mail address, and phone number of person requesting the consultation.
- Guidance may be requested on provisional reimbursement to the contractor of its costs while the legal action is pending, but consultation on this is not required.

AL-2001-03 (05/25/01)

The GC point-of-contact, or local counsel, will review the available information and provide comments and guidance material to the individual requesting consultation within 30 days of receiving the information. The GC point-of-contact, or local counsel, will then be available for further discussion with the contracting officer after he/she has reviewed the provided guidance.

What is the Procedure for Submitting Documentation to the Office of Procurement and Assistance Management after Determinations of Allowability?

The Office of Procurement and Assistance Policy, Office of Procurement and Assistance Management, is the office designated to receive this information for both the Department and NNSA actions. The final report, in the form of an electronic copy (in Wordperfect or Microsoft Word) of the contracting officer's written final determination, must be e-mailed to: whistleblowers@hq.doe.gov. A point-of-contact in the contracting office should be provided in case further information is needed.



**FLASH 2001-17
(MAY 25, 2001)**

A. Federal Acquisition Circular (FAC) 97-25

The following two items are contained in **FAC 97-25**, which was published in the *Federal Register* on May 2, 2001 (66 FR 22082), and became effective on that date.

1. Preference for Performance-Based Contracting (FAR Case 2000-037)

This interim rule implements Section 821 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Pub. L. 106-398), the substance of which was summarized in the March 14, 2001, memorandum issued by the Acting Director, Office of Procurement and Assistance Management, Subject: Continued Emphasis on Performance-Based Contracting.

This interim rule-

- ☐ Moves the existing definition of *Performance-Based Contracting* from FAR 37.101 to FAR 2.101 and revises it to include the substance of the definition in paragraph (e) of Section 821; and
- ☐ Revises FAR 37.102, Policy, to explicitly state that performance-based contracting is the preferred method for acquiring services and to enumerate the order of precedence established by Section 821.

2. Contractor Personnel in the Procurement of Information Technology Services (FAR Case 2000-609)

The interim rule implements Section 813 of Pub. L. 106-398. Section 813 prohibits the use of minimum experience or education requirements for contractor personnel in solicitations for the acquisition of information technology services, unless-

- (a) the contracting officer first determines that the needs of the agency cannot be met without such requirement; or
- (b) the needs of the agency require the use of a type of contract other than a performance-based contract.

B. Federal Acquisition Circular (FAC) 97-26

The following three items are in **FAC 97-26**, which was published in the *Federal Register* on May 16, 2001(66 FR 27406), and became effective on that date.

FLASH 2001-17
(MAY 25, 2001)

1. Electronic Commerce in Federal Procurement (FAR Case 1997-304)

This interim rule:

- ☐ Further implements Section 850 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105-85), by designating a single point of universal electronic public access to Governmentwide procurement opportunities (the "Governmentwide Point of Entry" or "GPE").
 - ➔ In general, Section 850 calls for the use of cost-effective procedures and processes that employ electronic commerce in the conduct and administration of Federal procurement systems. Section 850 also eliminated the statutory preference for the Federal Acquisition Computer Network (FACNET) computer architecture in conducting transactions electronically that was prescribed in the Federal Acquisition Streamlining Act of 1994.
 - ➔ An interim rule implementing Section 850 was first published (63 FR 58590) on October 30, 1998. The first interim rule revised the FAR to promote the use of cost-effective procedures and processes that employ electronic commerce in the conduct and administration of Federal procurement systems; and require Federal procurement systems that employ electronic commerce to apply nationally and internationally recognized standards that broaden interoperability and ease the electronic interchange of information.
 - ➔ Public comments on the first interim rule were received from 28 respondents. These comments were considered in the development of this second interim rule contained in FAC 97-26.
- ☐ Implements Section 810 of Pub. L. 106-398. Section 810 allows agencies to provide access to notices through the GPE, or by publishing them in the Commerce Business Daily (CBD).
 - ➔ This rule designates Federal Business Opportunities ("FedBizOpps") as the GPE and the principal venue for procurement notices.
 - ➔ Agencies must begin transmitting notices to "FedBizOpps" no later than October 1, 2001, and will no longer be required to provide notice in the CBD after January 1, 2002.

Reference is made to the joint memorandum issued by the DOE and NNSA Directors of Procurement and Assistance Management, dated April 3, 2001, Subject: Implementation of Electronic Commerce Initiatives. Information concerning the

FLASH 2001-17
(MAY 25, 2001)

Department's implementation of this rule may be directed to Doug Baptist, Acting Director, Information Management Systems Division, Office of Management Systems and Services, at (202) 586-0813.

2. Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects (FAR Case 2001-016)

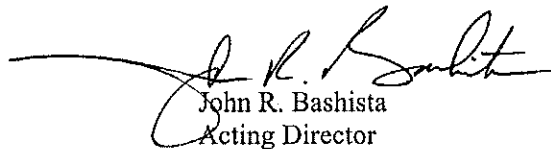
This interim rule amends the FAR to implement Executive Order 13202 which prescribes that agencies may not require or prohibit offerors, contractors, or subcontractors from entering into or adhering to agreements with one or more labor organizations. It also permits agency heads to exempt a project from the requirements of the Executive Order under certain circumstances.

Implementing Departmental guidance is currently being developed by the Office of Procurement and Assistance Policy.

3. Executive Order 13204, Revocation of Executive Order on Nondisplacement of Qualified Workers Under Certain Contract (FAR Case 2001-017)

This interim rule amends the FAR to implement Executive Order 13204. Executive Order 13204 revoked Executive Order 12933 titled, "Nondisplacement of Qualified Workers Under Certain Contracts," and requires that any rules implementing Executive Order 12933 be rescinded. Accordingly, this rule amends the FAR by removing FAR subpart 22.12, Nondisplacement of Qualified Workers Under Certain Contracts.

Questions concerning this Flash may be directed to Denise Wright at (202) 586-6217, or by email at: denise.wright@pr.doe.gov.


John R. Bashista
Acting Director

cc:
PPAG Members



Headquarters Policy Flash

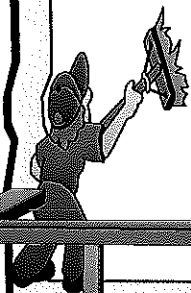
FLASH 2001-18

DATE: May 31, 2001
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

SUBJECT: Premier of Acquisition and Assistance *e-Digest*

SUMMARY: After being absent for the past few years, the Acquisition and Assistance Digest is making a comeback via a new, user-friendly electronic version. The *e-Digest* will serve as a repository for news and information for the Department's acquisition and assistance workforce, and will include the following:

- ✓ Articles and news on acquisition and assistance topics;
- ✓ An archive for past articles;



FLASH 2001-18

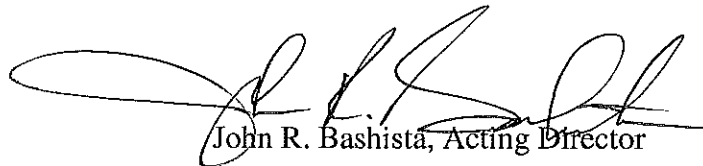
MAY 31, 2001

- ✓ A "What's New" section that identifies recently issued policies, procedures and notices;
- ✓ Recurring topics in specialized areas - such as Property, Training, Legal, Small Business, and NNSA issues;
- ✓ Links to DOE Policy Issuances - Flashes, the DEAR, Acquisition Guide, ALs, etc.;
- ✓ Links to Federal Policy issuances - the FAR, OMB/OFPP Policy, Executive Orders, etc.;
- ✓ Upcoming events;
- ✓ Frequently asked Q & A's (as they are asked, of course);
- ✓ A "Who's Who?" that identifies functional area responsibilities, contact information, and new staff members at Headquarters; and
- ✓ A Customer Feedback e-mail link.

The Office of Procurement and Assistance Policy will maintain the *e-Digest* with support and contributions from personnel in other Headquarters and field offices. While the articles will be updated and archived on a quarterly basis, news and other information will be added frequently to keep our readers informed of the latest developments in DOE and the Federal acquisition arena. The website address for the *e-Digest* is

<http://www.pr.doe.gov/digest/default.htm>

As always, we are interested in receiving your suggestions and contributions for articles. Please contact Kevin Smith with any ideas at Kevin.M.Smith@pr.doe.gov.



John R. Bashista, Acting Director

cc: PPAG Members



Headquarters Policy Flash

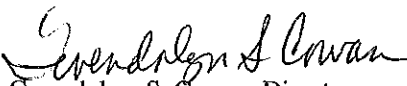
FLASH 2001-19

DATE: July 10, 2001
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

SUBJECT: FINAL RULE - Administrative Amendment

SUMMARY: On July 2, 2001, the Department of Energy (DOE) published in the Federal Register a final rule [FR 34783] amending the Department of Energy Assistance Regulations. The rule eliminates the requirement for Secretarial approval of a determination that a noncompetitive award is in the public interest. The final rule is effective August 1, 2001 and a copy is attached for your viewing.

Contact Trudy Wood of this office at (202) 586-5625, or via e-mail at Trudy.Wood@hq.doe.gov for questions related to this Flash.


Gwendolyn S. Cowan, Director

Attachment

cc: PPAG Members

defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104-4) requires each Federal agency to prepare a written assessment of the effects of any Federal mandate in a proposed or final rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million in any one year. The Act also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed "significant intergovernmental mandate," and it requires an agency to develop a plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirement that might significantly or uniquely affect small governments. The rule published today does not contain any Federal mandate, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277), requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. This rulemaking is not subject to a requirement to propose for public comment, and section 654 therefore does not apply.

List of Subjects in 10 CFR Part 600

Administrative practice and procedure.

Issued in Washington, on June 20, 2001.

Spencer Abraham,
Secretary of Energy.

For the reasons set out in the preamble, part 600 of Chapter II, Title 10 of the Code of Federal Regulations, is amended as follows:

PART 600—FINANCIAL ASSISTANCE RULES

1. The authority citation for part 600 is revised to read as follows:

Authority: 42 U.S.C. 7101 *et seq.*; 31 U.S.C. 6301-6308; 50 U.S.C. 2401 *et seq.*, unless otherwise noted.

2. Section 600.6 is amended by revising paragraph (c)(8) to read as follows:

§ 600.6 Eligibility.

* * * * *

(c) * * *

(8) The responsible program Assistant Secretary, Deputy Administrator, or other official of equivalent authority determines that a noncompetitive award is in the public interest. This authority may not be delegated.

* * * * *

[FR Doc. 01-16553 Filed 6-29-01; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 1, 7, and 23

[Docket No. 01-13]

RIN 1557-AB94

Investment Securities; Bank Activities and Operations; Leasing

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is publishing this final rule to amend its rules governing investment securities, bank activities and operations, and leasing. The revisions to the investment securities regulations incorporate the authority to underwrite, deal in, and purchase certain municipal bonds that is provided to well capitalized national banks by the Gramm-Leach-Bliley Act (GLBA). The final rule also makes the following revisions to the bank activities and operations regulations: it establishes the conditions under which a school where a national bank participates in a financial literacy program is not considered a branch under the McFadden Act; it revises the OCC's regulation governing bank holidays so that the wording of the rule conforms with the statute that authorizes the Comptroller to declare mandatory bank closings; it clarifies the scope of the term "NSF fees" for purposes of 12 U.S.C. 85, the statute that

governs the rate of interest that national banks may charge; it simplifies the OCC's current regulation governing national banks' non-interest charges and fees; and it provides that State law applies to a national bank operating subsidiary to the same extent as it applies to the parent national bank. Finally, the revisions to the leasing regulations authorize the OCC to vary the percentage limit on the extent to which a national bank may rely on estimated residual value to recover its costs in personal property leasing arrangements. The purpose of these changes is to update and revise the OCC's regulations to keep pace with developments in the law and in the national banking system.

EFFECTIVE DATE: August 1, 2001.

FOR FURTHER INFORMATION CONTACT: For questions concerning 12 CFR 1.2, contact Beth Kirby, Special Counsel, Securities and Corporate Practices Division, (202) 874-5210. For questions concerning 12 CFR 7.3000, contact Michele Meyer, Counsel, Legislative and Regulatory Activities Division, (202) 874-5090. For questions concerning 12 CFR 7.1021, 7.4001, 7.4002 and 7.4006, contact Michele Meyer, Counsel, or Mark Tenhundfeld, Assistant Director, Legislative and Regulatory Activities Division, (202) 874-5090. For questions concerning 12 CFR 23.21, contact Steven Key, Senior Attorney, Bank Activities and Structure Division, (202) 874-5300.

SUPPLEMENTARY INFORMATION:

Introduction and Overview of Comments Received

On January 30, 2001, the OCC published in the *Federal Register* a notice of proposed rulemaking (the NPRM, proposed rules, or the proposal) concerning its rules governing investment securities, bank activities and operations, and leasing. See 66 FR 8178. The proposed revisions to the investment securities regulations incorporated the authority to underwrite, deal in, and purchase certain municipal bonds that is provided to well capitalized national banks by the Gramm-Leach-Bliley Act (GLBA). The proposed rules also contained several revisions to the OCC's bank activities and operations regulations. First, it established the conditions under which a school where a national bank participates in a financial literacy program is not considered a branch under the McFadden Act. Second, it revised the OCC's regulation governing bank holidays so that the wording of the rule conforms with the statute that

Rules and Regulations

Federal Register

Vol. 66, No. 127

Monday, July 2, 2001

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF ENERGY

10 CFR Part 600

RIN 1991-AB58

Assistance Regulations; Administrative Amendment

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is amending the Department of Energy Assistance Regulations to make a change in the approval authority for a determination that a noncompetitive award is in the public interest.

EFFECTIVE DATE: This final rule is effective August 1, 2001.

FOR FURTHER INFORMATION CONTACT:

Trudy Wood, Office of Procurement and Assistance Policy (MA-51), U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585; telephone: 202-586-5625.

SUPPLEMENTARY INFORMATION:

I. Explanation of Change

II. Procedural Requirements

A. Review Under Executive Order 12866

B. Review Under the Regulatory Flexibility Act

C. Review Under the Paperwork Reduction Act

D. Review Under the National Environmental Policy Act

E. Review Under Executive Order 13132

F. Review Under Executive Order 12988

G. Review Under the Unfunded Mandates Reform Act

H. Review Under the Treasury and General Government Appropriations Act, 1999

I. Explanation of Change

On October 20, 1999, the DOE published several administrative and technical amendments to the Department of Energy Assistance Regulations (64 FR 56418), including an amendment to 10 CFR § 600.6 ("Eligibility") that required the approval of the Secretary of Energy for any determination that a noncompetitive

award is in the public interest. DOE has since concluded that the requirement for Secretarial approval on such determinations is more appropriately addressed in internal agency management documents, which permit greater flexibility in particular situations. Today's rule eliminates the requirement for Secretarial approval from 10 CFR 600.6. DOE has also updated the list of authorities at the end of the table of contents for 10 CFR 600 by adding the provisions that authorize the National Nuclear Security Administration within DOE.

II. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be "a significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Because DOE is not required by the Administrative Procedure Act (5 U.S.C. 553) or any other law to propose financial assistance rules for public comment, DOE did not prepare a regulatory flexibility analysis for this rule.

C. Review Under the Paperwork Reduction Act

No new collection of information is imposed by this final rule. Accordingly, no clearance by the Office of Management and Budget is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

D. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions that would not individually or cumulatively have a significant impact

on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule deals only with agency procedures, and, therefore, is covered under the Categorical Exclusion in paragraph A6 to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," (61 FR 4729, February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately



Headquarters Policy Flash

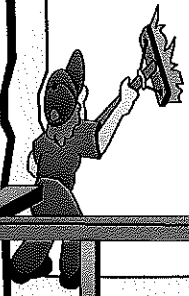
FLASH 2001-20

DATE: August 2, 2001
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

SUBJECT: Consortium Buying
Financial Assistance Letter (FAL) 2001-02
2001 Edition of the Federal Acquisition Regulation (FAR)

SUMMARY: **Consortium Buying**

Acquisition Letter 99-04, **Consortium Buying**, dated June 23, 1999 alerted Contracting Officers to the valuable work being done by the Integrated Contractor Purchasing Team (ICPT) for the DOE complex. It advised Contracting Officers (CO) to examine the use of ICPT agreements by their contractors and requested that COs furnish their contractors the URL for the ICPT's homepage.



FLASH 2001-20
(August 2, 2001)

The ICPT has revised and updated its home page making it more informative and more user friendly. The new url is: <http://www.hanford.gov/pmm/icpt/home.html>
Contracting Officers are requested to advise their major facilities management contractors of the new WWW address.

Contact Ed Lovett via e-mail at Ed.Lovett@hq.doe.gov for questions related to this subject matter.

Financial Assistance Letter (FAL) 2001-02

FAL 2001-02, Preservation of Open Competition and Government Neutrality Towards Contractors' Labor Relations on Federally Funded Construction Projects implements Executive Order 13202, as amended. It directs contracting officers to include a special provision in financial assistance awards for construction projects. The FAL is effective on August 10, 2001, and will be available online under the "professionals homepage link at www.pr.doe.gov

The FAL has been reviewed by the Deputy Secretary and has been approved for release.

If you have questions, please contact Trudy Wood at (202) 586-5625 or Trudy.Wood@hq.doe.gov.

2001 Edition of the Federal Acquisition Regulation (FAR)

There have been so many changes to the FAR that the FAR Council has decided to issue a new edition of the FAR. The 2001 edition of the FAR should be released the first week in August. Future Federal Acquisition Circulars will use the new numbering system based on the 2001 edition of the FAR. The Government Printing Office (GPO) has told the General Services Administration that GPO will publish a paper edition. It appears that each agency will need to order copies from GPO. The cost is \$220.00 and may be purchased by government credit card. Contact the GPO at 202-512-1800 (DC Metro area) or toll free at 1-866-512-1800 for further information.


Gwendolyn S. Cowan, Director

cc: PPAG Members



Headquarters Policy Flash

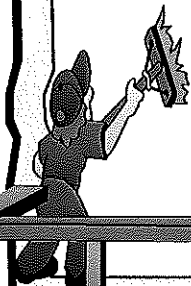
FLASH 2001-21

DATE: August 22, 2001
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

SUBJECT: Acquisition Letter (AL) 2001-04
Acquisition Letter (AL) 2000-10R

SUMMARY: **Acquisition Letter (AL) 2001-04**

This Flash summarizes Acquisition Letter (AL) 2001-04, issued August 22, 2001, which provides guidance to Department of Energy personnel on the implementation of Section 508 of the Rehabilitation Act of 1973, as amended. The AL addresses specific DOE implementation, as summarized in the following areas:





Headquarters Policy Flash

FLASH 2001-22

DATE: August 30, 2001
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

SUBJECT: New Acquisition Guide Chapter

SUMMARY: A new section to Chapter 37 is being added to the Acquisition Guide to include guidance and instruction on the development of Performance Work Statements.

The Administration has identified a number of actions to make the government more results-oriented. One of these is to increase use of performance-based contracts. For Fiscal Year 2002, the Department has committed to the following targets:

FLASH 2001-22
(August 30, 2001)

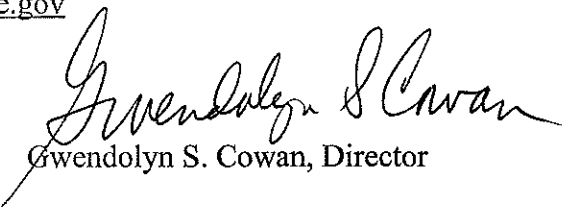
- ◆ 60% of total service contracting dollars (over \$100K) will be obligated as performance-based services contracts; and
- ◆ 66% of total eligible new service contract actions (over \$100K) will be performance-based contracts.

To assist contracting activities in using performance-based concepts, guidance is being provided on the development of performance work statements, including critical acquisition planning considerations. The new Guide section provides information such as how to perform a job analysis, how to write a performance work statement and performance analysis, and what should be in a quality assurance surveillance plan. Sample performance work statements are also provided as tools to assist in the preparation of project specific work statements.

Note: The Performance Based Contract Guide referenced in Chapter 71 of the acquisition guide was developed for specific use with Management and Operating contracts. However, use of this guide in the Service contract environment is not precluded.

The Guide is available online at our Professionals Homepage link under Procurement at www.pr.doe.gov

For questions related to this Flash contact Denise Wright at (202) 586-6217, or via e-mail at DeniseWright@hq.doe.gov


Gwendolyn S. Cowan, Director

cc: PPAG Members



Headquarters Policy Flash

FLASH 2001-23

DATE: October 2, 2001
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

SUBJECT: Restrictions on Management and Operating and Support Services Contracting

SUMMARY: The Director, Office of Procurement and Assistance Management has issued a Memorandum dated October 1, 2001 to all Program Officials to remind them of the restrictions and sensitivities in contracting for support services. Included in the guidance is a reiteration of the prohibition of using M&O contracts to provide Departmental support services. The memorandum also discusses certain areas of vulnerability when contracting for support services, e.g. inherently governmental functions, inappropriate employer-employee relationships and conflict of interest issues. Attached to the memorandum was the MA-5



FLASH 2001-23
(October 2, 2001)

memorandum to Procurement Directors of February 28, 2001 entitled "Guidance on Management and Operating Contractor Purchasing" and the updated brochure entitled *Contracting for Support Services, What You Need to Know As A Federal Employee*.

Attached is a copy of the above described memorandum. The brochure is available online under procurement, regulations and guidance on the MA-5 Professionals Homepage at <http://professionals.pr.doe.gov>.

For questions related to this Flash contact Michael Raizen at (202)586-8189 or via e-mail at michael.raizen@pr.doe.gov.


Gwendolyn S. Cowan, Director

Attachment

cc: PPAG Members

Inappropriate employer-employee relationships may lead to situations where contractor employees perform personal services for Federal employees, which is contrary to civil service laws that normally require Federal agencies to obtain its employees by direct hire under competitive appointments. If the Government exercises relatively continuous supervision and control over contractor personnel performing a contract then the services are personal in nature and an improper employee-employer relationship exists.

A *conflict of interest* occurs when a person or organization is unable to render impartial assistance or advice to the Government because of other activities or relationships, or when a person or organization has an unfair competitive advantage. Two prominent examples of where a conflict of interest may exist are 1) if a potential offeror participated in earlier work involving the same program and has access to source selection or proprietary information or 2) if the work under a contract will put a contractor in a position to influence Government decision-making that will affect the contractor's current or future business. In all cases where a conflict of interest may exist, procurement and General Counsel personnel are available to assist you.

Summary: The Department has over the years responded to congressional and other inquiries about the extent and improper nature of using M&O and support service contracts. Good management practice dictates that all Federal employees be cognizant of the vulnerabilities unique to the administration of M&O contracts and the acquisition of support services. To this end, I would appreciate your discussing these matters with your management staff and disseminating the information to both your program employees and field activities under your cognizance.

The attached brochure entitled "*Contracting for Support Services, What You Need to Know As A Federal Employee*" has been prepared to assist you. Additional copies of the brochure can be obtained through procurement, regulations and guidance on the Office of Procurement and Assistance Management professionals page at <http://professionals.pr.doe.gov>. If you have any questions regarding this memorandum, please contact Mr. Michael Raizen at (202)586-8189 or via e-mail at michael.raizen@pr.doe.gov.

Attachments

- 1) MA-5 Memorandum for Procurement Directors dated February 28, 2001
- 2) Brochure: *Contracting for Support Services, What You Need to Know As A Federal Employee*

DISTRIBUTION:

Deputy Administrator for Defense Programs
Deputy Administrator for Defense Nuclear Nonproliferation
Deputy Administrator for Naval Reactors
Associate Administrator for Facilities and Operations
Associate Administrator for Management and Administration
Assistant Secretary for Fossil Energy
Assistant Secretary for Energy Efficiency and Renewable Energy
Assistant Secretary for Environmental Management
Assistant Secretary for Environment, Safety and Health
Assistant Secretary for Policy and International Affairs
Assistant Secretary for Congressional and Intergovernmental Affairs
Administrator, Energy Information Administration
Administrator, Bonneville Power Administration
Administrator, Southeastern Power Administration
Administrator, Southwestern Power Administration
Administrator, Western Area Power Administration
Director, Office of Defense Nuclear Counterintelligence
Director, Office of Defense Nuclear Security
Director, Office of Nuclear Energy, Science and Technology
Director, Office of Civilian Radioactive Waste Management
Director, Office of Science
Director, Office of Worker & Community Transition
Director, Office of Emergency Operations
Director, Office of Economic Impact and Diversity
Director, Office of Public Affairs
Director, Office of Hearings and Appeals
Director, Office of the Secretary of Energy Advisory Board
Director, Office of Independent Oversight & Performance Assurance
Director, Defense Nuclear Facilities Safety Board Liaison
Director, Office of Counterintelligence
Director, Office of Intelligence
Director, Office of Security
Chief Information Officer
Chief Financial Officer
Inspector General
General Counsel



Department of Energy
Washington, DC 20585

FEB 28 2001

MEMORANDUM FOR PROCUREMENT DIRECTORS

FROM: RICHARD H. HOPF 
ACTING DIRECTOR, OFFICE OF
MANAGEMENT AND ADMINISTRATION

SUBJECT: GUIDANCE ON MANAGEMENT AND OPERATING
CONTRACTOR PURCHASING

Over the past 6 years, the Department has successfully re-engineered its approach to management and operating (M&O) contractor purchasing systems, to the point where M&O contractors are now able to use best commercial business purchasing practices to meet the great majority of their subcontracting needs. By my previous memorandum, dated January 30, 1996, I provided you with guidance on the appropriate use of M&O contractors as they implemented the approved changes to their processes. During the course of these process changes, various Headquarters and Field offices appear to have forgotten a basic tenet of DOE policy concerning M&O purchasing practices that remains unchanged.

Department policy has been, and continues to be, that M&O contractors are authorized to use DOE funds to make only such purchases as are necessary to support contractually defined programs. This policy is consistent with the Federal Acquisition Regulation (FAR) limitations on the use of M&O contracts contained in Subpart 17.6. In addition, DOE O 542.1 prohibits Departmental personnel from directing work to a particular source through, or accepting work for, any of the Department's contractors for the purpose of avoiding the Competition in Contracting Act, or as a means of satisfying a requirement for which the Government should contract directly.

The order also requires a justification for other than full and open competition, as if the work were being contracted directly, whenever the Department of Energy assigns work to a laboratory or other contractor, and requires performance by a specific subcontractor(s). The justification must include a determination by the initiating program official that such work is consistent with the contractor's assigned program responsibilities, and that the contractor has the technical capability to perform the work assigned.

In recent months, I have become aware of instances where certain Headquarters and Field offices have been directing work to M&O contractors in a manner inconsistent with the requirements of the Competition in Contracting Act, the FAR, and DOE O 542.1. M&O contractor purchases that are unrelated to their contractually defined scopes of work present a number of potential problems. Such purchases give rise to questions of whether the Department is trying to

circumvent applicable procurement laws and regulations. The M&O contractor also runs the risk of being viewed as a purchasing agent for DOE, thus possibly becoming subject to, among other things, a requirement to conduct its subcontract procurement actions in accordance with the FAR provisions applicable to placement of prime contracts; and, protests at the General Accounting Office. However, what is most important is that inappropriate M&O contract purchasing activities may jeopardize the continued use of the best commercial practices purchasing system. The Department has realized significant benefits from this system, by allowing M&O contractors to make their purchasing more cost-effective. We do not want to risk a return to the inefficient layering of noncommercial, Government-based systems and process-oriented Federal oversight that characterized M&O contractor purchasing systems until the middle of the last decade.

With these thoughts in mind, I would like to restate the following guidance on the appropriate role of M&O contractor purchases:

- M&O contractor purchasing should be limited to acquisitions that are necessary to support contractually assigned mission functions, or permitted work for others activities.
- M&O purchasing for the sole support of DOE Headquarters or field offices is prohibited.
- In certain limited circumstances, M&O contractors may purchase for mixed M&O/DOE site activities, when it is not practicable to segregate DOE requirements from those of the M&O contractor.
- All work assignments to a laboratory or other contractor where the Department of Energy requires performance by a specific subcontractor(s), must satisfy the conditions stated above, and be supported by a written justification for other than full and open competition as if the Department were contracting directly for the work.

As Procurement Directors, you are responsible for ensuring that M&O contractor purchasing capabilities are not used inappropriately to satisfy DOE requirements. Please be aware that it is my intention to ensure that accountability is present throughout our sites and locations. Also, please advise me if you receive pressure from Headquarters elements to circumvent the guidance in this letter, and use your M&O contractors for inappropriate purchases.

If you have any questions on this matter, please contact Mr. John Bashista, Acting Director, Office of Procurement and Assistance Policy, at 202-586-8182.



Headquarters Policy Flash

FLASH 2001-24

DATE: October 16, 2001
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

SUBJECT: 1. Financial Assistance Letter (FAL) 2001-03
2. e-Digest

SUMMARY: 1. **Financial Assistance Letter (FAL) 2001-03**

FAL 2001-03, "Determining Appropriate Award Instrument" has been issued and is effective October 26, 2001. This FAL provides guidance for determining whether to use a grant, cooperative agreement, or procurement contract when making an award. Please note that the Contracting Officer is responsible for selecting the appropriate award instrument. FAL 2001-03 will be available online at www.professionals.pr.doe.gov

FLASH 2001-24
October 16, 2001

For questions related to this subject matter, please contact Trudy Wood at (202) 586-5625 or at trudy.wood@pr.doe.gov

2. ***e-Digest***

The Office of Procurement and Assistance Policy has posted the next issue of the ***e-Digest*** on the DOE procurement professionals home page. Look for the issue under procurement, regulations and guidance or use the quick link, drop down box at the following location:

<http://professionals.pr.doe.gov>

This issue of the ***e-Digest*** contains articles addressing the recent DOE Re-Organization, Teaming Arrangement Pitfalls, Procurement Executive Guidance on M&O and Support Service Contracting, Writing User-Friendly Documents, Increasing Socioeconomic Opportunities, Financial Capability, Contractor Legal Management Requirements and the Procurement Evaluation and Re-engineering (PERT) Story.

As stated in the DOE Re-Organization article, the Office of Procurement and Assistance Management is now part of the Office of Management, Budget and Evaluation. Just announced are the new routing symbols for Office of Procurement and Assistance Management as follows:

- ME-60 - Office of Procurement and Assistance Management
- ME-61 - Office of Procurement and Assistance Policy
- ME-62 - Office of Contract Management
- ME-63 - Office of Resource Management
- ME-64 - Office of Headquarters Procurement Services
- ME-65 - Office of Management Systems and Services

FLASH 2001-24
October 16, 2001

The *e-Digest* serves as a repository for news and information for the Department's acquisition and assistance workforce, and includes the following:

- ✓ Articles and news on acquisition and assistance topics;
- ✓ An archive for past articles;
- ✓ Recurring topics in specialized areas - such as Property, Training, Legal, Small Business, and NNSA issues;
- ✓ Links to DOE Policy Issuances - Flashes, the DEAR, Acquisition Guide, ALs, etc.
- ✓ Links to Federal Policy issuances - the FAR, OMB/OFPP Policy, Executive Orders, etc.
- ✓ A "Who's Who?" that identifies functional area responsibilities, contact information, and new staff members at Headquarters.
- ✓ and many more useful features...

The Office of Procurement and Assistance Policy will maintain the *e-Digest* with support and contributions from personnel in other Headquarters and field offices. As always, we are interested in receiving your ideas, suggestions, and contributions for articles. Please contact Michael Raizen at michael.raizen@pr.doe.gov or (202)586-8189 with your thoughts.


Gwendolyn S. Cowan, Director



Headquarters Policy Flash

FLASH 2001-25

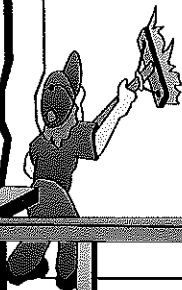
DATE: October 25, 2001
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

SUBJECT: 1. Financial Assistance Letter (FAL) 2001-04
2. Acquisition Letter (AL) 2001-05

SUMMARY: 1. **Financial Assistance Letter (FAL) 2001-04**

FAL 2001-04, "Management of Report Deliverables," was issued on October 25, 2001 (effective November 8, 2001) and is available online at www.professionals.pr.doe.gov

This FAL supersedes FAL 98-02 and provides guidance regarding:



FLASH 2001-25
October 25, 2001

- ✓ responsibilities for determining appropriate reporting requirements;
- ✓ selecting the minimum requirements for reporting technical and financial performance;
- ✓ post award administration;
- ✓ enforcing reporting requirements and obtaining overdue deliverables; and
- ✓ implementing new electronic reporting requirements for scientific and technical reports.

The FAL includes a revised DOE F 4600.2 Federal Assistance Reporting Checklist, which is available on the Department's Directives, Regulations, Policies, and Standards Portal at <http://www.directives.doe.gov/>.) The FAL also cancels the following reporting forms:

- ✓ DOE F 4600.3- Federal Assistance Milestone Plan;
- ✓ DOE F 4600.3A - Milestone Log; and
- ✓ DOE F 4600.5 - Federal Assistance Summary Report.

Please contact Trudy Wood at (202) 586-5625 or trudy.wood@pr.doe.gov if you have any questions related to the FAL.

2. Acquisition Letter (AL) 2001-05

AL-2001-05, "Maximizing Opportunities for Small Business," was published October 12, 2001, and is effective October 26, 2001. The purpose of this AL is to supplement the guidance contained in AL 2000-02 and provide to Department of Energy (DOE) officials who are involved in the acquisition of goods and services, and through them to contractors that manage and operate major DOE sites and facilities, guidance and administrative tools to most effectively use small businesses, small disadvantaged businesses, 8(a) certified firms, women-owned small businesses, veteran-owned small businesses, service disabled veteran-owned small businesses, Native American small businesses, Tribal businesses, and HUBZone small business concerns in the award of DOE prime contracts and subcontracts.

FLASH 2001-25
October 25, 2001

This AL is available on line at www.pr.doe.gov under "Regulations and Guidance." For questions related to this AL, contact Bob Webb at (202) 586-8264 or at Robert.Webb@pr.doe.gov


for Gwendolyn S. Cowan, Director

cc: PPAG Members



Headquarters Policy Flash

FLASH 2001-26

DATE: November 6, 2001
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

SUBJECT: Federal Acquisition Circular 2001-01

SUMMARY: This Policy Flash summarizes the items in FAC 2001-01, published in the Federal Register on October 22, 2001 (66 FR 53478). Contracting personnel should review the details of each item in the full text of the FAC.



FLASH 2001-26
November 6, 2001

I. **Application of the Davis-Bacon Act to Construction Contracts with Options to Extend the Term of the Contract**

Effective Date: December 21, 2001

This final rule implements the Department of Labor's requirement to incorporate a current Davis-Bacon Act wage determination at the exercise of each option to extend the term of a contract for construction.

II. **Acquisition of Commercial Items**

Effective Date: December 21, 2001

This final rule:

- ☛ Amends the FAR to clarify the definition of "commercial item."
- ☛ Provides language that will help contracting officers make determinations related to commercial items.
- ☛ Alerts contracting officers to be aware of customary commercial terms and conditions that may affect the contract price when pricing commercial items.
- ☛ Directs that contracting officers should use standard commercial practices instead of the policies in Subpart 46.8 (Contractor Liability for Loss of or Damage to Property of the Government). The clause at 52.212-4, Limitation of liability, is amended to conform to standard commercial practice.

For further information on this subject contact
Mr. Michael Raizen on 586-8189 or via e-mail at
Michael.Raizen@hq.doe.gov.

FLASH 2001-26
November 6, 2001

III. Prompt Payment Under Cost-Reimbursement Contracts for Services

Effective Date: October 22, 2001

Applicability Date: This amendment is applicable to solicitations issued and contracts awarded on or after October 22, 2001. Any cost reimbursement solicitations issued or contracts awarded for services on or after December 15, 2000, but prior to October 22, 2001 must be amended/modified to incorporate the new Alternate I to 52.232-25. In no event may agencies pay late payment penalty interest for any delay in payment that occurred prior to December 15, 2000.

This interim rule:

- ☛ Implements changes in the Office of Management and Budget's (OMB) Prompt Payment Act regulations at 5 CFR 1315 that implemented Section 1010 of the National Defense Authorization Act for Fiscal Year 2001. Those changes were published as an interim final rule and became effective on December 15, 2000 (65 FR 78403) and were applicable to all covered contracts awarded on or after December 15, 2000.
- ☛ Requires agencies to pay an interest penalty in accordance with regulations issued, whenever an interim payment under a cost-reimbursement contract for services is paid more than 30 days after the agency receives a proper invoice from a contractor. **The Act does not permit payment of late payment penalty interest for any period prior to December 15, 2000.**

For further information on this subject, contact
Terry Sheppard at (202) 586-8193, or via e-mail at
Terry.Sheppard@hq.doe.gov

FLASH 2001-26
November 6, 2001

IV. Veterans' Employment (FAR Case 1998-614)

Effective Date: December 21, 2001

This final rule:

- Amends the FAR to implement statutory and regulatory changes related to veterans' employment opportunities and reporting.
- Amends the FAR to prohibit contracting officers from obligating or expending appropriated funds to enter into a contract with a contractor that has not met its veterans' employment reporting requirements (VETS-100 Report).
- Exempts contracts for commercial items or contracts valued at or below the simplified acquisition threshold.
- Adds a new solicitation provision that requires each offeror to represent, by submission of its offer, that it is in compliance with the VETS-100 reporting requirements.
- Provides the contracting officer information on verification of compliance, by checking with the Department of Labor.

Note: This FAC supersedes the VETS 100 Reporting - FAR Deviation discussed in Flash #99-03 May 28, 1999, effective July 20, 1999. The new FAR coverage satisfies the deviations as previously discussed in Civilian Agency Acquisition Council Letter 98-6.

For further information on this subject, contact Robert Webb at (202) 586-8264, or via e-mail at Robert.Webb.@hq.doe.gov.

FLASH 2001-26
November 6, 2001

V. Veterans Entrepreneurship and Small Business Development Act of 1999

Effective Date: October 22, 2001

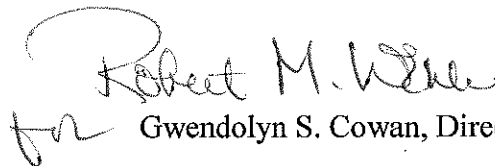
This interim rule:

- ☞ Amends the FAR to implement section 803 of the Small Business Reauthorization Act of 2000, part of the Consolidated Appropriations Act, 2001 (Pub. L. 106-504) that was enacted on December 21, 2000.
- ☞ Requires subcontracting activity pertaining to service-disabled veteran-owned small business concerns be reported as a separate category under a small business subcontracting plan; and
- ☞ Changes the Standard Form (SF) 294 "Subcontracting Report for Individual Contracts," and the SF 295 "Summary Subcontract Report," to capture this category of information for the contracting officer.

VI. Very Small Business Pilot Program

This final rule amends FAR Subpart 19.9 to extend the Very Small Business Pilot Program for three additional years to September 30, 2003, implementing Section 503(c) of the Small Business Reauthorization Act of 2000.

For further information on this subject contact Bob Webb at (202) 586-8264, or via e-mail at Robert.Webb@hq.doe.gov


for Gwendolyn S. Cowan, Director

cc: PPAG Members



Headquarters Policy Flash

FLASH 2001-27

DATE: November 14, 2001
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

SUBJECT: Implementation of New Advance Award Notification System

SUMMARY: On October 29, 2001, the Deputy Secretary signed a memorandum (attached) to announce a new process for providing advance award notification to DOE senior managers. The new process provides for an electronic system for advance notification of award of certain prime contracts and subcontracts. The new system also fulfills the current requirement to provide advance notification to the Office of Congressional and Intergovernmental Affairs. *The system is now fully operational. In accordance with the October 29, 2001, memorandum, all new award notifications issued on or after November 15, 2001, must be submitted to Headquarters via the electronic system.*

FLASH 2001-27
November 14, 2001

The purpose of this Policy Flash is to remind contracting personnel of their responsibility to implement the Advance Award Notification System on November 15, 2001, and to provide additional guidance to supplement the instructions provided in the October 29, 2001, memorandum.


- ✓ Contracting activities are responsible for providing the notification. The attachment to the Deputy Secretary's memorandum fully explains the system. The criteria for advance award notification has not changed from the requirements of DOE Order 1220.1A, with the exception of subcontracts for which DOE has consent responsibilities that now will be reported. Notice of subcontract awards is to be made by DOE personnel filling out a DOE F 4220.10, using information supplied by the prime contractor during consent reviews.
- ✓ For subcontract awards, the word "SUBCONTRACT" must be manually entered in Block 3 of DOE F 4220.10. The remainder of the information in Block 3 and that called for in Block 6 should be taken from the subcontract, not the prime contract. (Note: We anticipate that the form will be revised in the near future to eliminate the need to manually insert the word "subcontract.")
- ✓ A copy of DOE F 4220.10 is provided at <https://notification.pr.doe.gov> and it can be electronically filled out. After entering the information on the Congressional Grant/Contract Notification form, DOE F 4220.10, a copy should be printed and signed. It should then be scanned using Adobe Acrobat and uploaded in PDF format to the website. Detailed instructions for uploading the notification forms are contained on the website.
- ✓ Effective November 15, 2001, the electronic system replaces the requirement to fax a copy of the form to the Office of Congressional and Intergovernmental Affairs. The Office of Congressional and Intergovernmental Affairs will have access to the system to obtain the necessary information for congressional notification purposes. However, copies of related press releases will still need to be faxed directly to CI-40 in accordance with the instructions on the back of the form.

FLASH 2001-26
November 14, 2001

To access the electronic system it will be necessary for appropriate individuals in each Procurement Office to obtain a user identification code and password. It is recommended that a primary and alternate point of contact for entering data be assigned. Information is provided at the website to obtain appropriate authorization to access the system and access will be provided on the same day of request.

We also ask that you pay special attention to providing adequate, detailed information in Block 9 of the form to assist senior management in understanding the nature and substance of the prospective award.

Please contact Bob Webb at (202) 586-8264 for questions on the requirement for submitting advance award notifications, and Paul Coombs at (202) 586-4934 for questions concerning access to the website.


Gwendolyn S. Cowan, Director

Attachment


cc: PPAG Members



The Deputy Secretary of Energy
Washington, DC 20585

October 29, 2001

MEMORANDUM FOR HEADS OF DEPARTMENTAL ELEMENTS

FROM: FRANCIS S. BLAKE 
SUBJECT: Advance Award Notification

The Department of Energy (DOE) spends most of its budget on contracts and financial instruments (grants and cooperative agreements). Because of the wide diversity of DOE programs, it is important that the Department's senior officials be notified of prospective awards. At present, prime contract and financial assistance award information is required to be provided 48 hours in advance of an award to the Office of Congressional and Intergovernmental Affairs in accordance with DOE Order 1220.1. The purpose of this memorandum is to expand the requirement to include notification of certain management and operating subcontract awards, and to provide for the electronic submission of the data to replace the current paper-based system in DOE Order 1220.1.

I have directed the Office of Procurement and Assistance Management to develop an electronic web site that will be used for the submission of the required Congressional notification for prime awards and for providing notification of management and operating contract subcontract awards for which the Department has consent responsibilities. The attached "Headquarters Notification of Procurement and Financial Assistance Award Actions" is an outline of what will be required. The Office of Procurement and Assistance Management will provide additional details of the system prior to implementation.

Accordingly, effective November 15, 2001, all departmental elements will submit electronic notifications of pending awards as described herein. Contracting activities will be responsible for providing the notification. If you have any questions, please contact Richard H. Hopf, Director, Office of Procurement and Assistance Management at (202) 586-8613.

Attachment

HEADQUARTERS NOTIFICATION OF PROCUREMENT AND FINANCIAL ASSISTANCE AWARD ACTIONS

- ✓ Notification of the following prime contract and financial assistance award actions, and certain M&O subcontract award actions, shall be provided electronically to Headquarters no later than 48 hours prior to award. The electronic "Congressional Grant/Contract Notification" form (DOE F 4220.10) will be utilized. The DOE F 4220.10 is available at <http://www.directives.doe.gov/pdfs/forms/4220-10.pdf>. After the data has been entered onto the form, a copy should be downloaded and signed. It should then be electronically transmitted in PDF format to <https://notification.pr.doe.gov> which will be provided as a central repository for collection purposes. Information regarding notification of awards will be provided to:
 - ✓ the Office of Congressional and Intergovernmental Affairs to provide necessary Congressional notification of the Department's activities. (This new system will obviate the need to fax a copy of DOE Form 4220.10 to the Office of Congressional and Intergovernmental Affairs.)
 - ✓ the Offices of the Deputy Secretary, Under Secretary of the National Nuclear Security Agency, Under Secretary of Energy, Science and Environment, and Chief Financial Officer.
- ✓ Prime contract and financial assistance award notification will be reported on DOE Form 4220.10 in accordance with DOE Order 1220.1A, Change 1, Congressional and International Affairs.
- ✓ M&O subcontract award notification will also be reported on DOE form 4220.10 for prospective awards for which DOE has consent responsibilities. Block 3 of the form should be annotated to reflect that the award is a subcontract award.
- ✓ The following information should be provided consistent with the requirements on DOE Form 4220.10:
 - ✓ Informing Office (e.g. Field Activity), Name and Telephone #
 - ✓ Program/Project Office, Name and Telephone #
 - ✓ Contractor/Recipient Name and Address
 - ✓ Place of Performance
 - ✓ Proposed Date of Award
 - ✓ Type of Instrument (e.g. Contract/Grant/Cooperative Agreement)
 - ✓ Type of Award (e.g. new/renewal/modification)
 - ✓ Obligated Cost or Price of the Action and Recipient Cost Sharing, if applicable
 - ✓ Duration of Agreement
 - ✓ Brief Description of Activities being performed under the Award

U.S. DEPARTMENT OF ENERGY

Office of Congressional and Intergovernmental Affairs (CI)

CONGRESSIONAL GRANT/CONTRACT NOTIFICATION

TO: Office of Congressional & Intergovernmental Affairs
ATTN: Contract Notification Coordinator (CI-40)
U.S. Department of Energy
1000 Independence Avenue, SW Room 8G-070
Washington, D. C. 20585

Telephone: 202-586-2764
Fax: 202-586-5497

1. Informing Office: Name: _____ (Contracting Office Representative) Telephone: () _____	2. Program Office/Project Office: Name: _____ Telephone: () _____
3. Contractor, Grantee or Offeror: Name: _____ Street: _____ City: _____ State _____ Zip _____	4. Place of Performance: (Required if different from #3) Street: _____ City: _____ State _____ Zip _____
5. Proposed Date of Award: _____ of Public Announcement: _____ (If any)	6. Contract, Grant, or Other Agreement No.: _____ (Specify Type of Instrument) <input type="checkbox"/> New <input type="checkbox"/> Renewal <input type="checkbox"/> Modification (Total to date: \$ _____) Does this award result from an Information For Bid? <input type="checkbox"/> Yes <input type="checkbox"/> No
7. Obligated Cost or Price of this Action: \$ _____ Estimate Cost or Price of Total Contract: \$ _____ Recipient Cost Sharing (if applicable): \$ _____ (For incrementally funded contracts only. Report the initial obligation and total estimated contract value.)	8. Duration of Contract, Grant, or Other Agreement: From: _____ To: _____
9. Brief Description. (Please use non-technical/plain English language/no acronyms.) _____ _____	

TO BE COMPLETED BY OFFICIAL RESPONSIBLE FOR SUBMISSION

10. Method of Submission: <input type="checkbox"/> Mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Carry	Date: _____ Time: _____ <input type="checkbox"/> A.M. <input type="checkbox"/> P.M.
Name: _____	Title: _____
Signature: _____	Office: _____

Instructions for Completing and Submitting DOE F 4220.10

At least 48 hours in advance of actions, reportable as set forth below, the cognizant procurement office shall provide notice of the expected action. This 48-hour time frame does not apply to termination actions which may be issued without delay. On these, DOE F 4220.10 shall be submitted as close to the 48-hour time frame as practicable.

Reportable Actions:

Selection of a single offeror for negotiation when the estimated amount of the resulting award is over the prescribed dollar threshold. (Reporting of this selection obviates the need to report the related award or modification.)

An award of a contract, grant, cooperative agreement, other financial assistance, and interagency agreement over the prescribed dollar threshold.

Modifications of the above instruments over the prescribed dollar threshold when the modification involves the addition of new work, the exercise of an option, or a termination action. Excluded are administrative changes, including funding actions; changes within the scope of the instrument; orders or notices under clauses such as a property clause, or a suspension of work clause; and the definitization of a letter contract.

Subcontract level actions are not reportable unless a press release is to be issued by the Department of Energy (DOE) or unless the subcontract level action is known to have been the subject of a Congressional inquiry.

Dollar Thresholds:

The prescribed thresholds for reporting an action are as follows:

An amount of \$50,000 or more for an award or modification with a nonprofit educational institution or with a state or local government.

An amount of \$500,000 or more for an award or modification with other entities.

A reduction of \$50,000 or more for a termination with a nonprofit educational institution or with a state or local government.

A reduction of \$500,000 or more for termination with other entities.

An amount of \$1 million or more for a selection of a single offeror for negotiation.

In calculating the threshold dollar amount of a modification, count the amount of the instant modification, not the cumulative amount of the original instrument as modified. The dollar amount of an option item is to be excluded, except when reporting the exercise of the option. In a cost-sharing arrangement, the threshold is based on the amount of the share of the DOE. Actions which involve funding only are not reportable.

Completion of DOE F 4220.10

Blocks 1 to 8 and 10 are self-explanatory. Block 9, the brief description of the covered effort should be in simple, non-technical/plain English language understandable by a lay person rather than in the technical language often used in the statement of work.

Submission of DOE F 4220.10

Completed DOE F 4220.10 with a copy of related press releases, if any, should be transmitted via telefax to 202-586-5497, mailed or hand-delivered to the Contract Notification Coordinator at the following address:

U.S. Department of Energy
Office of Congressional and Intergovernmental Affairs (CI-40)
Attention: Contract Notification Coordinator
Forrestal Building, Room 8G-070
Washington, DC 20585

Confirm receipt with the Contract Notification Coordinator on 202-586-2764. Should an action not proceed as planned, advise the Contract Notification Coordinator immediately. For further information, contact the Contract Notification Coordinator on 202-586-2764.



Headquarters Policy Flash

FLASH 2001-28

DATE: December 7, 2001
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

SUBJECT: Greening the Government Executive Orders

SUMMARY: Acquisition Letter (AL) 2000-03 dated May 16, 2000, was issued to establish Green Acquisition Advocates at each site to serve as procurement experts and team members for Greening the Government initiatives. The AL also provided information on two Executive Orders that had been issued. Since that time two more Executive Orders have been published:

- ✓ Executive Order 13148 Greening the Government Through Leadership in Environmental Management; and
- ✓ Executive Order 13149 Greening the Government Through Federal Fleet and Transportation Efficiency.



FLASH 2001-28
December 7, 2001

Responsibilities associated with Executive Order 13148 have been published in DOE N 450.4. The Executive Order 13148 includes requirements for:

- ✓ Ozone -Depleting Substances
- ✓ Toxic Chemical Release Reporting
- ✓ Federal Compliance with Right to Know Laws and Pollution Prevention
- ✓ Environmental Management Systems and Facility Compliance Audits

These issues impact contracts with organizations that are:

- ✓ service providers or manufacture equipment or appliances containing ozone-depleting substances (generally refrigeration and fire suppression equipment);
- ✓ manufacturers in SIC codes 20 – 39 or NAICS sectors 31 – 33; or,
- ✓ contractors operating a Federal facility or performing work at a Federal facility.

Executive Order 13149 relates to Alternative Fuel Vehicles and the use of alternative fuels in the Federal motor vehicle fleet. It also involves environmentally preferable motor vehicle products. It impacts contracts for any of these products and management contracts which involve Federal motor vehicle fleet operations.

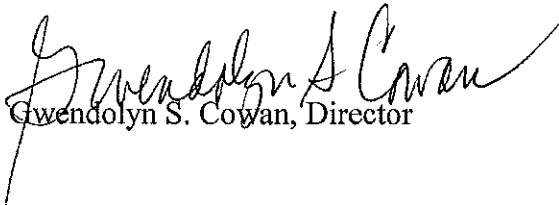
We are in the process of updating Acquisition Letter 2000-03 to include both Executive Orders. A draft rulemaking is also in the coordination process to establish a DEAR clause to implement Executive Order 13149 (Executive Order 13148 will be implemented through FAR and the DOE Directives).

To assist contracting offices in understanding the requirements of Executive Orders 13148 and 13149, we have prepared a briefing on each to be used for

FLASH 2001-28
December 7, 2001

training purposes. Green Acquisition Advocates should find these briefings useful in their efforts to ensure that the acquisition community is fully conversant with environmental factors affecting acquisition. *These two PowerPoint briefings are posted on our website at www.professionals.pr.doe.gov. Once at the professionals homepage click on "Acquisition and the Environment" listed under the blue bar titled "Procurement."*

For further information concerning these two Executive Orders, contact Richard Langston at (202) 586-8247.



Gwendolyn S. Cowan, Director

cc:
PPAG Members



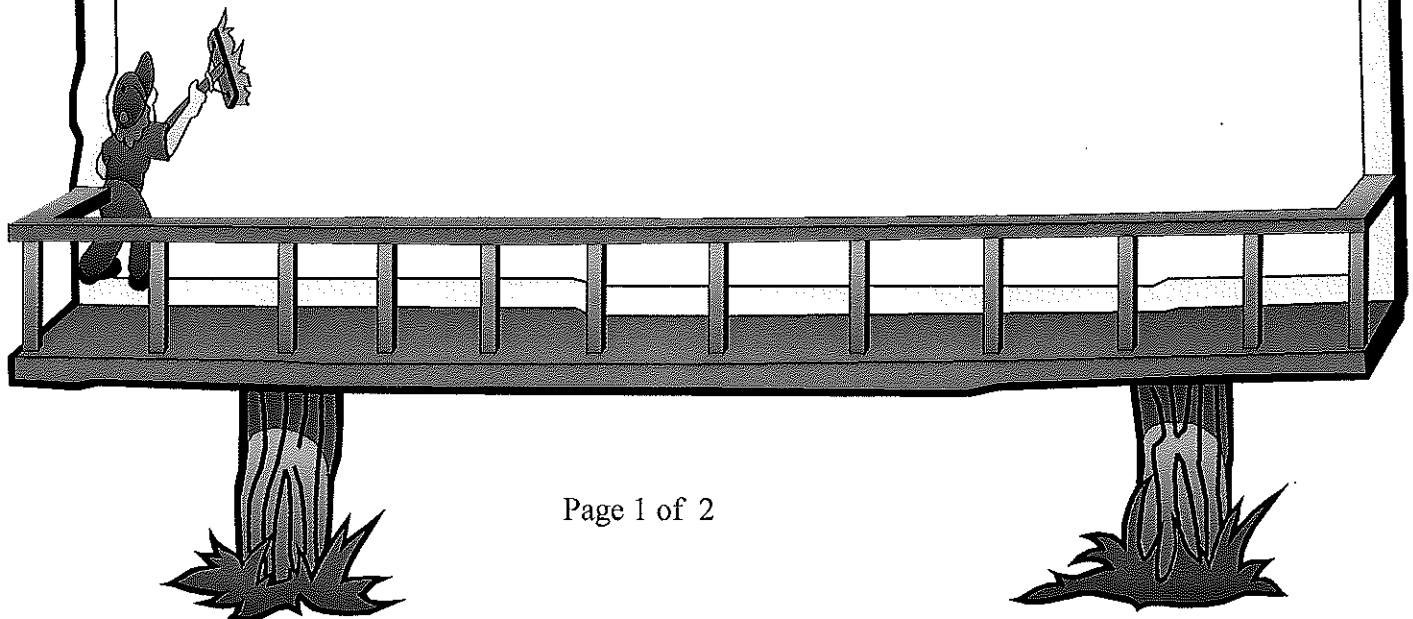
Headquarters Policy Flash

FLASH 2001-29

DATE: December 11, 2001
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

SUBJECT: Biological Etiologic Agents Notice 450.7 Implementation

SUMMARY: By his memorandum for Heads of Departmental Elements of November 20, 2001, "Biological Etiologic Agents Notice 450.7 Implementation," (attached) the Deputy Secretary required the Heads of Departmental Elements to incorporate DOE Notice 450.7, The Safe handling, Transfer, and Receipt of Biological Etiologic Agents at Department of Energy Facilities, into applicable contracts as soon as possible.

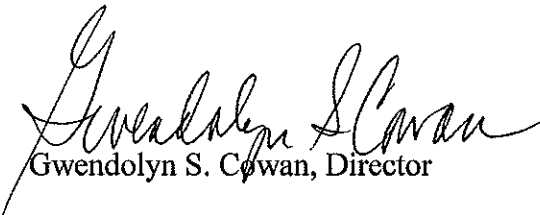


FLASH 2001-29
December 11, 2001

The Deputy Secretary stated that until the provisions of DOE Notice 450.7 are incorporated into contracts, Heads of Departmental Elements are directed to evaluate existing biological etiologic research and programs against the provisions of the Notice. Authority is also provided to take unilateral compensatory actions, if needed, to establish controls to ensure safety and security until the provisions of DOE Notice 450.7 are incorporated into affected contracts.

DOE Notice 450.7 was approved on October 17, 2001. Paragraph 5(b) of the Notice requires Contracting Officers, after being notified of the affected contracts, to incorporate the CRD and any amendments, as appropriate, into the affected major facilities management contracts. If you have cognizance for a facility that may transfer, use, or receive etiologic agents and you have not been advised of this new notice, please contact your program official within the Office of Worker Protection Policy for Environment, Safety and Health, and determine what appropriate steps need to be taken.

For further information related to this Flash, contact Mike Righi at (202) 586-4175.


Gwendolyn S. Cowan, Director

Attachment

cc:
PPAG Members



The Deputy Secretary of Energy
Washington, DC 20585

November 20, 2001

MEMORANDUM FOR HEADS OF DEPARTMENTAL ELEMENTS

FROM:

FRANCIS S. BLAKE 

SUBJECT:

Biological Etiologic Agents Notice 450.7 Implementation

The Department of Energy (DOE) can make a significant contribution to our national security through the conduct of research and work with biological etiologic agents. The goal of DOE Notice 450.7 is to provide appropriate, graded controls to enhance this much needed research and work activity, not restrict it.

The Department must be responsible stewards of biological etiologic agents, as we have done with radioactive materials, by implementing and complying with DOE Notice 450.7, *The Safe Handling, Transfer, and Receipt of Biological Etiologic Agents at Department of Energy Facilities*. DOE Notice 450.7, copy attached, should be incorporated into applicable contracts as soon as possible.

Until the provisions of DOE Notice 450.7 are incorporated into contracts, you are directed to evaluate existing biological etiologic research and programs against the provisions of the Notice. If you believe unilateral compensatory actions are needed to establish controls over this material to ensure safety and security, then you should direct such action in consultation with appropriate procurement officials.

Attachment

U.S. Department of Energy
Washington, D.C.

NOTICE

DOE N 450.7

Approved: 10-17-01
Expires: 06-17-02

**SUBJECT: THE SAFE HANDLING, TRANSFER, AND RECEIPT OF BIOLOGICAL
ETIOLOGIC AGENTS AT DEPARTMENT OF ENERGY FACILITIES**

1. **OBJECTIVES.**

- a. To establish requirements and assign responsibilities for the Department of Energy (DOE), including the National Nuclear Security Administration (NNSA), biological etiologic agent program.
- b. To ensure that work involving etiologic or potentially biological etiologic agents, including biological select agents, occurs in a safe, secure, and effective manner that protects workers, the public, and the environment.
- c. To comply with 42 CFR Part 72, Interstate Shipment of Etiologic Agents, which establishes regulations for the safe handling, transfer, use, or receipt of biological etiologic agents.
- d. To provide guidance on the safe handling, transfer, and receipt of biological etiologic agents until appropriate DOE Orders are revised to reflect this guidance.

2. **CANCELLATION.** None.

3. **APPLICABILITY.**

- a. **DOE Elements.** Except for the exclusions in paragraph 3d, this Notice applies to any DOE-owned or -leased facilities that may transfer, use, or receive, through any means, an agent defined in 42 CFR 72.1 as an etiologic agent or in section 72.6(j) as a select agent.
- b. **Contractors.** Except for the exclusion in paragraph 3d, Attachment 1, Contractor Requirements Document (CRD), is intended to apply to any DOE major facilities contractor that may transfer, use, or receive etiologic agents, including biological select agents, through any means. The major facilities management contractor must comply with the CRD after the contracting officer incorporates it into the contract in accordance with the laws, regulations, and DOE directives clause of the contract. Regardless of who performs the work, the contractor is responsible for compliance with the requirements of the CRD after it is incorporated into the contract. The contractor is responsible for flowing down the requirements of the CRD to subcontracts at any tier to the extent necessary to ensure the contractor's compliance with the requirements.

DISTRIBUTION:

INITIATED BY:
Office of Worker Protection Policy

- c. For the purposes of this Notice, DOE facility means any single site that may transfer, use, or receive through any means an etiologic agent, including a select agent, as defined in 42 CFR Part 72.
- d. Exclusion. The Naval Nuclear Propulsion Program, which is covered under Executive Order 12344, Public Law 98-525 (42 U.S.C. 7158, note), is responsible for establishing standards to provide adequate protection for workers, the public, and the environment for facilities and activities under Naval Nuclear Propulsion Program cognizance.

4. REQUIREMENTS.

- a. DOE activities involving biological etiologic agents must be performed in accordance with the regulatory requirements of 42 CFR Part 72 and 29 CFR 1910.1030, Occupational Exposures to Bloodborne Pathogens.
- b. Appropriate biological etiologic agents guidelines and best practices consistent with those contained in the most current edition of the U.S. Department of Health and Human Services (HHS) Centers for Disease Control and Prevention (CDC) Publication No. 93-8395, *Biosafety in Microbiological and Biomedical Laboratories*; the National Institutes of Health (NIH) *Guidelines for Research Involving Recombinant DNA Molecules*; and the World Health Organization (WHO) *Guidelines for the Safe Transport of Infectious Substances and Diagnostic Specimens* must be implemented for all DOE activities involving etiologic agents.
- c. DOE field elements must implement and manage a program that confirms handling, transfer, use, and receipt of biological etiologic agents is conducted by professionally and technically qualified individuals in a manner consistent with the potential hazard.
- d. DOE field elements must confirm that each DOE contractor performing work with etiologic biologic agents establishes an Institutional Biosafety Committee (IBC), which will be responsible for recommending approval and reviewing proposals and programs for compliance with CDC, NIH, WHO, and other international, Federal, State, and local guidelines for work with biological etiologic agents. This review should include assessment of containment level, facilities, procedures, practices, and training and expertise of personnel. In addition, this committee should review the site's security, safeguards, and emergency management plans and procedures to ensure that they adequately address work with biological etiologic agents. DOE staff, with the requisite technical expertise and training, must participate on the facility IBC.

- e. As required by the Integration of Environment, Safety and Health Into Work Planning and Execution (June 1997) contract clause as provided for in 48 CFR 970.5204-2 and consistent with DOE P 450.4, *Safety Management System Policy*, contractors operating DOE facilities must adequately address hazards. Particular emphasis should be placed on etiologic and biological select agents through review of appropriate plans, such as the site safeguards and security plans or facility or site security plans, and emergency management programs.
- f. As an addendum to the annual reporting requirement of the Federal Managers Financial Integrity Act (FMFIA), each DOE field element must provide an annual written statement, based on submittals by the contractors, that programs utilizing biologic etiologic agents are compliant with the requirements of this Notice.
- g. DOE field elements must maintain a copy of each CDC registration certificate issued to a DOE facility registered and approved to transfer, receive, and handle biological select agents at Biosafety Level (BSL) 2, 3, or 4 under their cognizance, and a copy of each of the CDC Form EA-101, Transfer of Select Agents, for each biological select agent received or transferred by a registered facility under their cognizance.
- h. Each DOE field element must maintain an automated inventory and record of the status of biological etiologic agents at facilities under their authority, based on annual reports from contractors.
- i. DOE field elements must work with the contractor to amend the contract or CRD language, when necessary when contractor employees are represented for collective bargaining by a labor organization, and as consistent with Federal labor laws.

5. RESPONSIBILITIES.

- a. Heads of Departmental Headquarters Elements.
 - (1) Confirm that DOE facilities are registered with the CDC for the transfer or receipt of the biological select agents pursuant to 42 CFR 72.6(a) prior to requesting or receiving such biological select agents.
 - (2) Notify the contracting officers to incorporate the CRD and any amendments to the CRD into the affected major facilities management contracts via the laws, regulations, and DOE directives clauses of the contracts.
- b. Contracting Officer, after being notified of the affected contracts, incorporates the CRD and any amendments to the CRD, as appropriate, into the affected major facilities management contracts.

- c. Assistant Secretary for, Office of Environment, Safety and Health. Prior to expiration of this Notice, assures that appropriate requirements for the safe handling, transfer, and receipt of biological etiologic agents at DOE facilities are integrated into existing DOE directives and guidance documents using integrated safety management principles.

6. REFERENCES.

- a. Title 42 CFR Part 72, Interstate Shipment of Etiologic Agents, 7-21-80 (revised 10-1-00).
(<http://www.cdc.gov/od/ohs/lrsat/42cfr72.htm>)
- b. *Biosafety in Microbiological and Biomedical Laboratories.* CDC/NIH publication (current edition).
(http://www.cdc.gov/ncidod/dvbid/Biosafety_manual_rev_1994.pdf)
- c. *NIH Guidelines for Research Involving Recombinant DNA Molecules.* NIH publication MSU/1998 (current edition).
(<http://www.niehs.nih.gov/odhsb/biosafe/nih/rdna-apr98.pdf>)
- d. *Guidelines for the Safe Transport of Infectious Substances and Diagnostic Specimens.* World Health Organization publication WHO/EMC/97.3 (current edition)
(<http://www.who.int/emc-documents/biosafety/docs/whoemc973.pdf>)
- e. Title 29 CFR 1910.1030, Occupational Exposures to Bloodborne Pathogens.
(http://www.osha-slc.gov/OshStd_data/1910_1030.html)
- f. Title 29 CFR 1910.1450, Occupational Exposure to Hazardous Chemicals in Laboratories.
(http://www.osha-slc.gov/OshStd_data/1910_1450.html)
- g. DOE P 450.4, *Safety Management System Policy*, dated 10-15-96.
7. CONTACT. Questions concerning this Notice should be addressed to the Office of Worker Protection Policy and Programs (EH-52), 301-903-6061.

BY THE AUTHORITY OF THE SECRETARY OF ENERGY:

FRANCIS S. BLAKE
Deputy Secretary of Energy

CONTRACTOR REQUIREMENTS DOCUMENT

DOE N 450.7, *The Safe Handling, Transfer, and Receipt of Biological Etiologic Agents at Department of Energy Facilities*

Regardless of the performer of the work, the contractor is responsible for compliance with this Contractor Requirements Document (CRD). The contractor is responsible for flowing down the requirements of this CRD to subcontracts at any tier to the extent necessary to ensure the contractor's compliance with the requirements. Department of Energy (DOE) contractors must provide a reasonably safe and healthful workplace for DOE workers, while also protecting the public and the environment and, in particular, must:

1. Comply with appropriate regulatory measures for the safe handling, transfer, use, or receipt of biological etiologic agents at DOE facilities (See Title 42 Code of Federal Regulations (CFR) Part 72, Interstate Shipment of Etiologic Agents and 29 CFR 1910.1030, Occupational Exposures to Bloodborne Pathogens).
2. Establish an Institutional Biosafety Committee (IBC), which will be responsible for reviewing any work with biological etiologic agents for compliance with appropriate Center for Disease Control and Prevention (CDC), National Institutes of Health (NIH), World Health Organization (WHO), and other State and local guidelines, and assessment of containment level, facilities, procedures, practices, and training and expertise of personnel. In addition, this committee should review for compliance the site's security, safeguards, and emergency management plans and procedures as related to work with biological etiologic agents.
3. Implement appropriate biological etiologic agents guidelines and best practices. See most current edition of the U.S. Department of Health and Human Services (HHS) CDC Publication No. 93-8395, *Biosafety in Microbiological and Biomedical Laboratories*; the NIH publication *Guidelines for Research Involving Recombinant DNA Molecules*; and the WHO publication *Guidelines for the Safe Transport of Infectious Substances and Diagnostic Specimens*.
4. Maintain an automated inventory and status of biological etiologic agents and confirm in a written statement, within 60 days of incorporation of this CRD into the contract, to the head of DOE field element, compliance with the requirements of this Notice. Provide to the responsible field and area office, through the laboratory IBC, an annual status report describing the status and inventory of biological etiologic agents and program.
5. Submit to the head of the appropriate DOE field element, for review and concurrence, prior to transmittal to the CDC, each Laboratory Registration/Select Agent Program registration application package requesting registration of a laboratory facility at Biosafety

Level 2, 3, or 4, for the purpose of transferring, receiving, or handling biological select agent(s).

6. Submit to the head of the appropriate DOE field element a copy of each CDC Form EA-101, Transfer of Select Agents, upon initial submission of the Form EA-101 to a vendor or other supplier requesting or ordering a biological select agent for transfer, receipt, and handling in the registered facility. Submit the completed copy of the Form EA-101, documenting final disposition and/or destruction of the select agent, within 10 days of completion of the Form EA-101.
7. Confirm the site safeguards and security plans and emergency management programs address biological etiologic agents with particular emphasis on biological select agents.
8. Establish an immunization policy for personnel working with biological etiologic agents based on the recommendations contained in the U.S. Public Health Service Advisory Committee on Immunization Practices (ACIP) and as updated in the CDC *Morbidity and Mortality Weekly Report*. The ACIP provides basic guidance, but specific immunization actions should be based on the DOE facility evaluation of risk and benefit of immunization.
9. Give labor organizations timely notice of the development and implementation of procedures under this CRD, and of any changes to those procedures, when contractor employees are represented for collective bargaining by a labor organization. The requirements of the CRD do not supersede contractor's obligation to bargain with labor organizations consistent with Federal labor laws.